

Appendices

Appendix F Density Bonus Research and PowerPoint

Density Bonus Programs and Policies

Vancouver	<p>Affordable Housing Initiatives:</p> <ul style="list-style-type: none"> ▪ Goal is to have 20% or more of all housing development city-wide to be low-income housing ▪ Create a proportional social mix everywhere ▪ In some instances, the city will buy the land from a developer and build social housing that would be sold to a non-profit entity at a discounted rate for further maintenance and up-keep of the development ▪ Development Cost Levy (DCL): A portion of the levy generated is directed toward adding more social housing within that area ▪ Affordable Housing Bonus Calculation: <ul style="list-style-type: none"> ▪ The difference between the value of land unencumbered and encumbered by the low cost of housing divided by the market value of per buildable sq. ft. results in the amount of bonus space given to developers
	<p>'Living First' Growth Strategy:</p> <ul style="list-style-type: none"> ▪ Housing initiative started in 1980s along with the Central Area Plan ▪ Pushing for housing intensity; insisting on housing diversity; structuring for coherent, identifiable, and supportive neighborhoods; and fostering suitably domestic urban design and architecture ▪ Developed design guidelines that applied to the entire central area ▪ Cost of public utilities and facilities are borne by the developers and not by the taxpayers ▪ Limit commuter access into downtown so more people would want to live closer to where they work and take advantage of the transit system ▪ Include both market and non-market housing, mixed incomes, family and non-family household, and unique housing choices ▪ Bring security to low-income people in downtown ▪ Massive rezoning of 8 million sq. ft. of commercial space for residential use adding 11,000 new residents to its 1,000 pre-existing residents
	<p>Amenity Bonus/TDR:</p> <ul style="list-style-type: none"> ▪ In order to seek approval developers have to factor in the costs of adding amenities around their site during the initial purchase of a site ▪ Density transfers are more common than gaining bonuses through affordable housing ▪ Density transfers are mainly used for historic preservation ▪ Grocery stores: <ul style="list-style-type: none"> ▪ There are about 10-12 grocery stores in downtown Vancouver ▪ They worked with the grocery stores to create a compact urban model suitable for downtown (25,000-30,000 sq. ft.)

Atlanta	<p>Transfer for Development Rights:</p> <ul style="list-style-type: none"> ▪ Not many developers take advantage of it due to the generous zoning of particular areas ▪ Mainly used for historic preservation ▪ Sending areas and receiving areas have to be located in the same area <p>Amenity Bonuses:</p> <ul style="list-style-type: none"> ▪ Amenity requirements are spelled out in their city code ▪ Site limitations, street light spacing, placement of utilities, requirements for canopies, tree grates and showering facilities ▪ Side-walks, tree plantings, street furniture, public art, and open space requirements ▪ All developers are expected to fulfill the amenity requirements set forth in the code ▪ Every building is encouraged to incorporate active uses at ground-level ▪ Ground-level retail bonus: developments that provide minimum of 20% street level retail are entitled to a FAR bonus of 2.0 <p>Affordable Housing requirement:</p> <ul style="list-style-type: none"> ▪ Every development should fulfill 20% requirement for affordable housing ▪ Additional affordable housing added provides a density bonus of up to 1.8 times net lot area ▪ Affordable Housing requirements should remain in place for 40 years and should have deed restrictions protecting the resale value of units ▪ Affordable housing units cannot be limited to only 1 bedroom. Developers have to designate a proportional mix of 1, 2 and 3 bedroom units throughout the project. ▪ Also, affordable units can't be the smallest size unit of its type. <p>Transit Station Area Bonus:</p> <ul style="list-style-type: none"> ▪ Developments around the transit area are permitted a height bonus of 3.2 times net lot area
Seattle	<p>Affordable Housing Initiatives:</p> <ul style="list-style-type: none"> ▪ 75% of the bonusable area must be derived from housing ▪ AT least one half of this area must be low income housing ▪ The other 25% can be derived from providing public amenities ▪ Developers can contribute to an affordable housing fund (\$13-\$20 per gross commercial square foot)

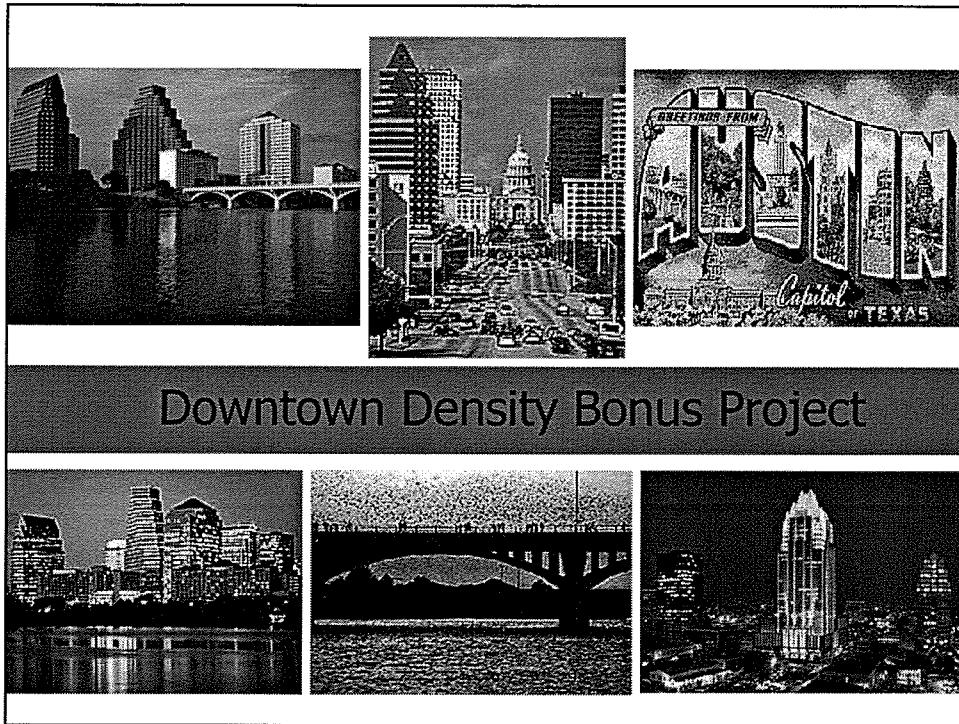
	<p>Transfer of Development Rights:</p> <ul style="list-style-type: none"> ▪ Purchasers and sellers can negotiate directly ▪ They city also purchases development rights and deposits them into a TDR Bank <p>TDR Bank:</p> <ul style="list-style-type: none"> ▪ Sending sites are usually rehabilitated low- and moderate- income residential rental housing ▪ Sending sites should remain affordable for 20 years ▪ Receiving sites are limited to the office core and designated mixed/commercial sectors ▪ Since 1985, the TDR Bank Program has funded 833 units of affordable housing 						
Portland	<p>Amenity Bonuses:</p> <ul style="list-style-type: none"> ▪ For each square foot of retail space provided an additional square foot of bonus space is gained up to an FAR of 3:1 ▪ If a developer includes a children's play area, sound insulation and solar water heating: <table> <tr> <td>Play area</td><td>5%</td></tr> <tr> <td>Sound insulation</td><td>10%</td></tr> <tr> <td>Solar water heating</td><td>5%</td></tr> </table> <p>20% bonus area</p> <ul style="list-style-type: none"> ▪ Bonuses are often not necessary since FAR's are already generous enough ▪ Most Downtown developers are able to gain the extra space they need by only using the residential bonus <p>Many of the bonuses are not economical, the bonus area provided seems subjective:</p> <ul style="list-style-type: none"> ▪ Why is a square foot of locker room worth 2 square feet of bonus area? ▪ Not many locker rooms, eco-roofs, and roof-top gardens are being built under the density bonus program ▪ Like the bonuses, TDR's are not necessary since the FAR's and residential bonus are already generous enough 	Play area	5%	Sound insulation	10%	Solar water heating	5%
Play area	5%						
Sound insulation	10%						
Solar water heating	5%						

California	<p>Model Density Bonus Ordinance (1996)</p> <ul style="list-style-type: none"> ▪ State density bonus law created to facilitate economic feasibility of affordable housing development in every city and county ▪ The ordinance offers a density bonus of at least 25% + additional incentive(s) to developers who reserve at least: <ul style="list-style-type: none"> - 20% a lower-income households - 10% a very low-income households or senior citizen housing ▪ Target units should remain affordable for 30 years or longer if: <ul style="list-style-type: none"> - Density Bonus and Additional incentive(s) were gained ▪ Target units should remain affordable for 10 years if: <ul style="list-style-type: none"> - Only density bonus is granted ▪ Target units should be built on-site ▪ Additional incentive(s) are determined on a case-by-case basis and are not limited to: <ul style="list-style-type: none"> - Reduction of site development standards or modification of zoning code - A density bonus of more than 25% - Waived or reduced development impact fees - Allow mixed-use developments ▪ San Diego: <ul style="list-style-type: none"> - In the downtown area, if a development is 80% residential or provides street level use, FAR can be increased by 2.0
Other cities	<p>Minneapolis, Kansas City, Baltimore, Denver, Pittsburgh, Columbus, Cincinnati, and Providence offer bonuses for some of the following amenities:</p> <ul style="list-style-type: none"> ▪ Setbacks ▪ Building around rapid transit ▪ Providing open space ▪ Ground floor retail ▪ Childcare facilities ▪ Outdoor art ▪ Historic Preservation ▪ Underground parking ▪ Contributing to cultural or entertainment funds
Boston	<ul style="list-style-type: none"> ▪ The need to incentivize residential development is not necessary: ▪ Due to a very strong demand for residential development along the waterfront, Back Bay area and Boston Commons ▪ A collaboration of City Agencies (BTD, BRA, PWD, BCSD) resulted into streetscape improvements within downtown ▪ Funding: Public/private partnership <ul style="list-style-type: none"> - \$1 million from the City and BRA - \$1.8 million in private funds ▪ There is a significant amount of residential development at the fringes of the financial district but not much within <p>Affordable Housing within the financial district:</p> <ul style="list-style-type: none"> ▪ Any residential development with a height of 350 has to designate 15% of it's units as affordable

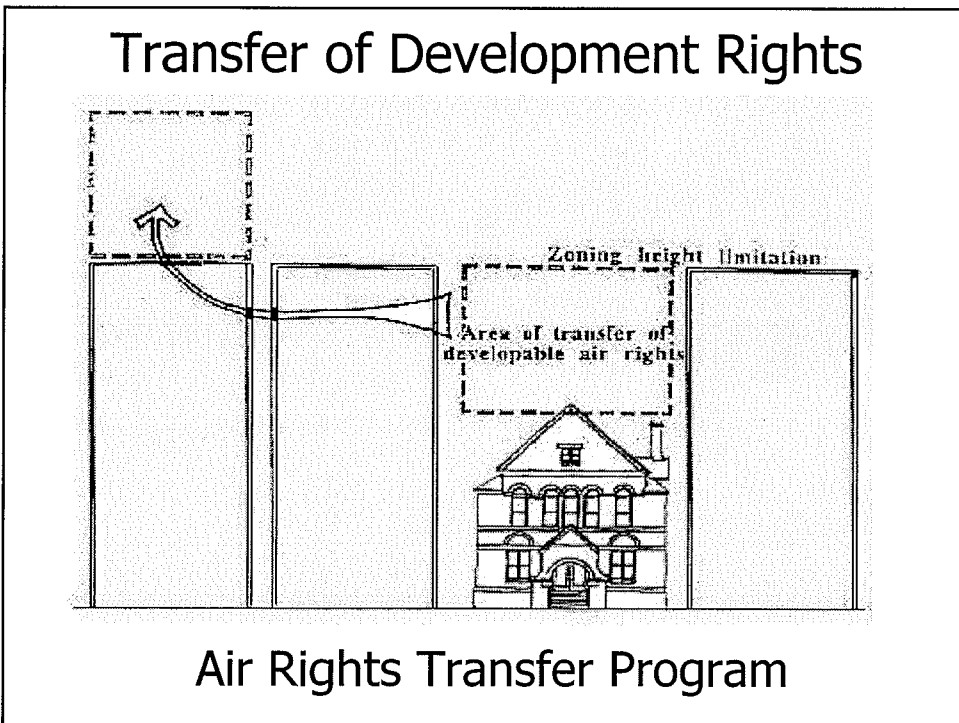
	<ul style="list-style-type: none"> Additional height could be earned (400 feet) if a developer contributes 20% or more of its units towards affordable housing <p>All amenity bonuses are negotiated on a case-by-case basis and the process usually takes 6 months if the developer is familiar with the process.</p>
Transfer of Development Rights	<ul style="list-style-type: none"> Allows owners in a zoning district where intense development is permitted to sell their unutilized development rights to owners of other sites Mostly used for preservation of historic buildings, landmark structures, open spaces, etc The program is usually paired with a historic tax abatement program to further TDR programs make strong land use regulations Owners of the sending site feel less political pressure if they are compensated for their “lost” rights Open space and historic buildings are permanently protected
Density Bonuses	<ul style="list-style-type: none"> Allowing a development to exceed the minimum FAR restrictions in exchange for affordable housing, amenity, etc Density bonus programs can be outlined in the city code or can be negotiated on a case-by-case basis between the City and the developer

Downtown Population 2002

	Downtown Size (acres)	Downtown Population	Percent of Total City Population
Austin	1,166	5,300	0.66%
Portland	717	10,195	2%
Atlanta		<27,300	
San Diego	1,445	18,431	1%
Seattle	981	21,194	4%
San Francisco	1,125	39,501	5%
Boston	1,471	51,894	9%
Vancouver	1,600	<80,000	13%



Downtown Density Bonus Project



Transfer of Development Rights

- Allows owners in a zoning district where intense development is permitted to sell their unutilized development rights to owners of other sites
- Mostly used for preservation of historic buildings, landmark structures, open spaces, etc
- The program is usually paired with a historic tax abatement program to further
- TDR programs make strong land use regulations
- Owners of the sending site feel less political pressure if they are compensated for their "lost" rights
- Open space and historic buildings are permanently protected

Density Bonuses

- Allowing a development to exceed the minimum FAR restrictions in exchange for affordable housing, amenity, etc
- Density bonus programs can be outlined in the city code or can be negotiated on a case-by-case basis between the City and the developer

Downtown Populations 2002

	Downtown Size (acres)	Downtown Population	Percent of Total City Population
Austin	1,166	5,300	0.66%
Portland	717	10,195	2%
Atlanta		<27,300	
San Diego	1,445	18,431	1%
Seattle	981	21,194	4%
San Francisco	1,125	39,501	5%
Boston	1,471	51,894	9%
Vancouver	1,600	<80,000	13%

Comparably Sized Cities

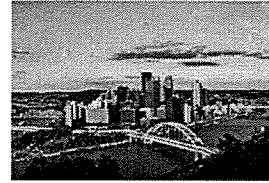
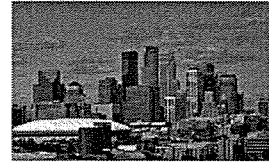
CITY	OFFERS SOME FORM OF BONUS
Charlotte	Yes
New Orleans	No
Austin	No
Nashville	Yes
Providence	Yes
Raleigh-Durham	Yes
Hartford	Yes
Buffalo	No
Memphis	No
Jacksonville	Yes
Oklahoma City	Yes
Louisville	Yes

Of 12 MSA's within 200,000 people of Austin's population, 8 offer some form of Density Bonus

Amenity Bonuses in Other Cities

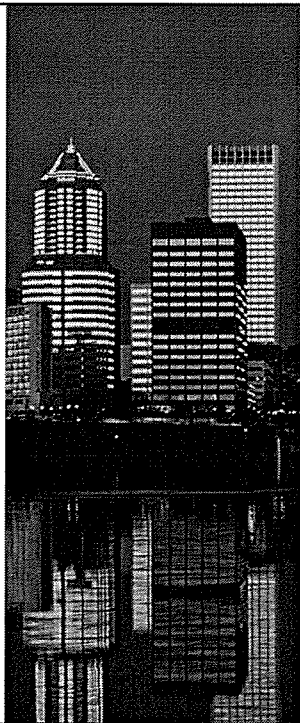
Cities such as Minneapolis, Kansas City, Baltimore, Denver, Pittsburgh, Columbus, Cincinnati, and Providence offer bonuses for some of the following amenities:

- Setbacks
- Building near rapid transit
- Providing open space
- Ground floor retail
- Childcare facilities
- Outdoor art
- Historic preservation
- Underground parking
- Contributing to cultural or entertainment funds



Portland

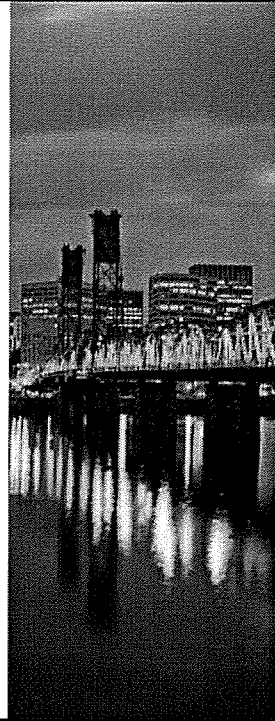
- Portland's density bonus program is the most progressive and extensive in the nation
- Developers can take advantage of almost 20 bonus incentives, including:
 - Residential space
 - Providing childcare
 - Locker rooms
 - Eco-roofs
 - Contributing to an affordable housing fund
 - Fountains and water features



Portland

- In Downtown, bonuses are calculated based on how much space is set aside for the amenity
 - for each square foot of retail space provided an additional square foot of bonus space is gained up to an FAR of 3:1
- In other residential zones, each bonus gains a percent, the percents are added up to a maximum of a 50% bonus
 - If a developer includes a children's play area, sound insulation and solar water heating:

Play area	5%	
Sound insulation	10%	+
Solar water heating	5%	+
		<hr/>
		20% bonus area



Portland

- Bonuses are often not necessary since FAR's are already generous enough
- Most Downtown developers are able to gain the extra space they need by only using the residential bonus
- Many of the bonuses are not economical, the bonus area provided seems subjective
 - Why is a square foot of locker room worth 2 square feet of bonus area?



Portland

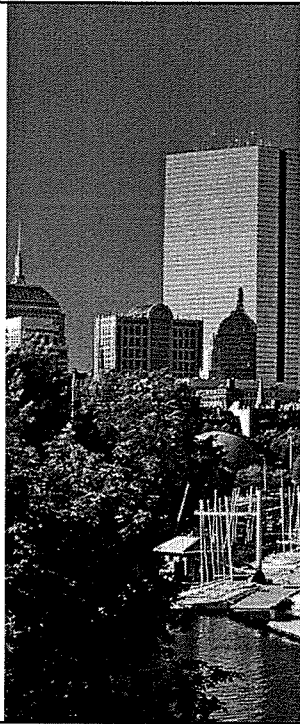
- So...
 - Not many locker rooms, eco-roofs, and roof-top gardens are being built under the density bonus program
 - Like the bonuses, TDR's are not necessary since the FAR's and residential bonus are already generous enough



Portland

- The current issues for developers in downtown Portland are height limits
- Unlike Seattle, attracting retail to downtown Portland's residential areas has not been a problem; the downtown area alone has 3 grocery stores.





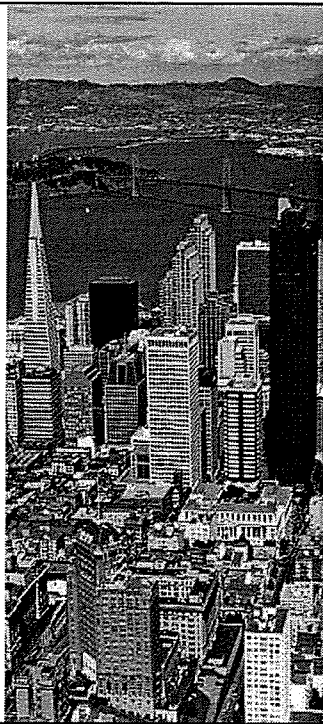
Boston

- The need to incentivize residential development is not necessary:
 - Due to a very strong demand for residential development along the water-front, Back bay area, and Boston Commons
- A collaboration of City Agencies (BTD, BRA, PWD, BCSD) resulted into streetscape improvements within downtown
 - Funding: Public/private partnership
 - \$1 million from the City and BRA
 - \$1.8 million in private funds
- There is a significant amount of residential development at the fringes of the financial district but not much within

Boston

- Affordable housing within the financial district:
 - Any residential development with a height of 350 feet has to designate 15% of it's units as affordable
 - Additional height could be earned (400 feet) if a developer contributes 20% or more of its units towards affordable housing
- All amenity bonuses are negotiated on a case-by-case basis and the process usually takes 6 months if the developer is familiar with the process

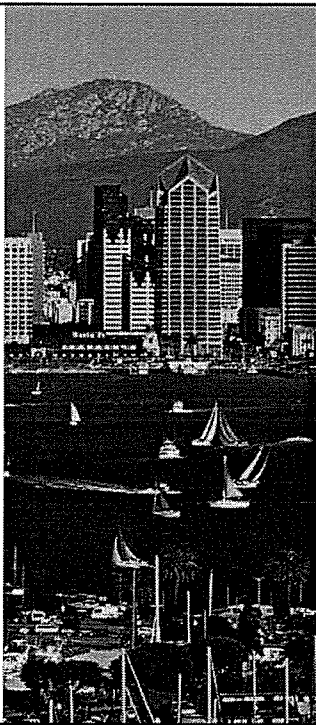




California

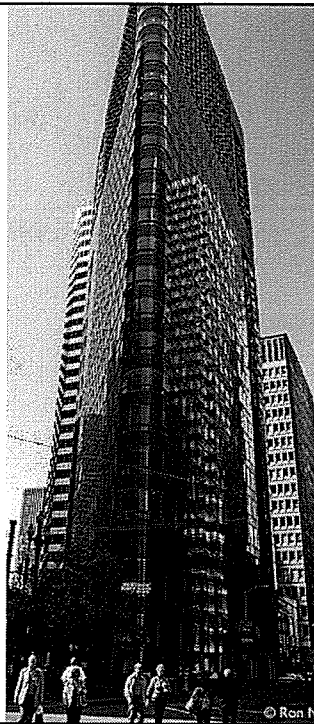
Model Density Bonus Ordinance (1996)

- State density bonus law created to facilitate economic feasibility of affordable housing development in every city and county
- The ordinance offers a density bonus of at least 25% + additional incentive(s) to developers who reserve at least:
 - 20% → lower-income households
 - 10% → very low-income households or senior citizen housing



Model Density Bonus Ordinance

- Target units should remain affordable for 30 years or longer if:
 - Density Bonus and Additional incentive(s) were granted
- Target units should remain affordable for 10 years if:
 - Only density bonus is granted
- Target units should be built on-site



Model Density Bonus Ordinance

- Additional incentive(s) are determined on a case-by-case basis and are not limited to:
 - Reduction of site development standards or modification of zoning code
 - A density bonus of more than 25%
 - Waived or reduced development impact fees
 - Allow mixed-use developments
- **San Diego:**
 - In the downtown area, if a development is 80% residential or provides street level use, FAR can be increased by 2.0

Seattle

- Seattle's Density Bonus Program focuses primarily on providing affordable housing
 - 75% of the bonusable area must be derived from housing
 - At least one half of this area must be low income housing
 - The other 25% can be derived from providing public amenities
- Rather than constructing housing, developers can contribute to an affordable housing fund (\$13-\$20 per gross commercial square foot)
- 2/3 of developments in downtown Seattle require the use of bonuses



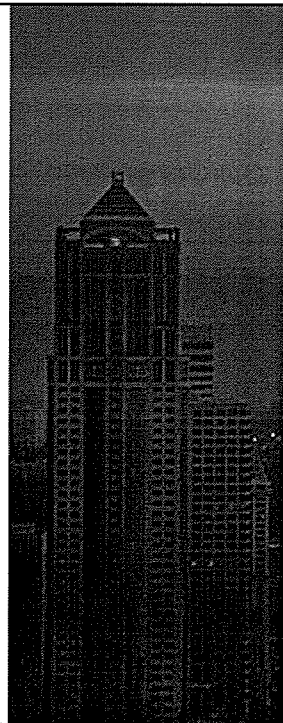


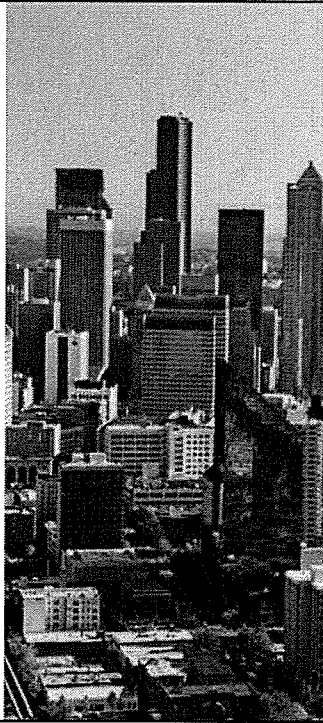
Seattle

- Seattle has had a few issues with downtown development
 - No grocery stores due to limited space, currently Whole Foods is contracting a Canadian firm from Vancouver to develop a grocery store downtown
 - Bus layovers downtown are a source of congestion, there is also a need for better public transit in general
 - Noise pollution increases with mixed-use development and is a deterrent to many would-be residents downtown

Seattle

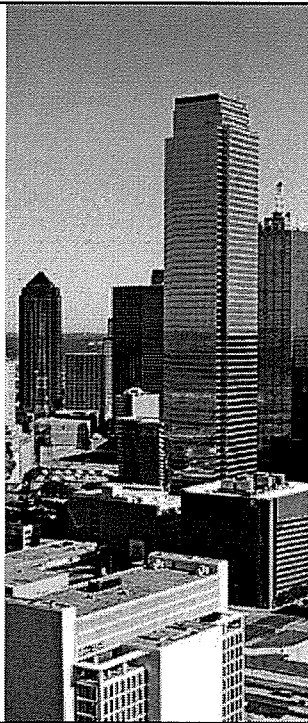
- The city has run a successful TDR program for over 20 years
 - Purchasers and sellers can negotiate directly
 - The city also purchases development rights and deposits them into a TDR Bank from which developers can purchase the rights
- Since 1985, the TDR Program has funded 833 units of affordable housing
- The Housing Bonus Program has helped fund 368 affordable housing units





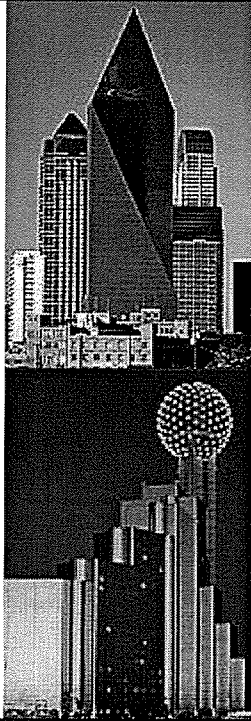
Seattle

- TDR bank:
 - Sending sites → rehabilitated low- and moderate-income residential rental housing
 - Sending sites should remain affordable for 20 years
 - Receiving sites are limited to the office core and designated mixed/commercial sectors
- This strategy has preserved over 833 affordable housing units within downtown Seattle



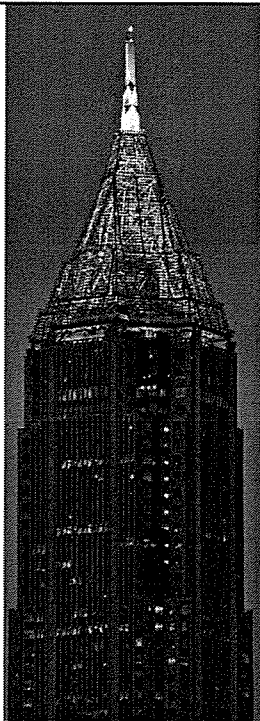
Dallas

- There has not been any new commercial or residential building built in Downtown Dallas since 1986
- Since then the trend has been to convert historic buildings for residential and commercial use
- Dallas does not use any incentive or bonus programs in its downtown because including residential use has always proved profitable for developers
- Under Public Improvement District (PID) 75% of ground floor has to be retail



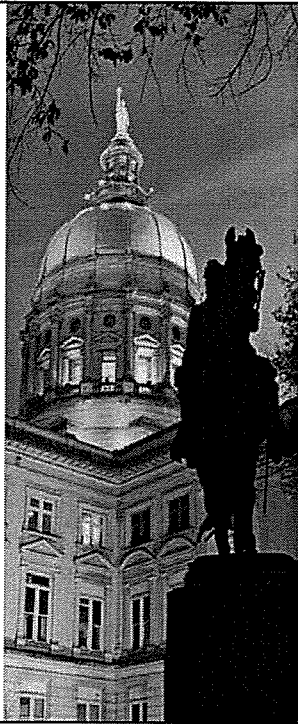
Dallas

- Affordable Housing Policy:
 - Under Section 8 from HUD, all projects have affordable units
 - Historic tax abatements
 - A 10 year tax exemption
 - A bonus of 5 years can be acquired after the initial 10 years for adding ground-floor retail
- Tax Increment Financing (TIF):
 - Generates money through increased equalized assessed values of the total property within a district
 - The difference between the base EAV and the new EAV after improvements is the increment that goes toward the TIF fund
 - For streetscaping in the downtown area
 - Façade renovations



Atlanta

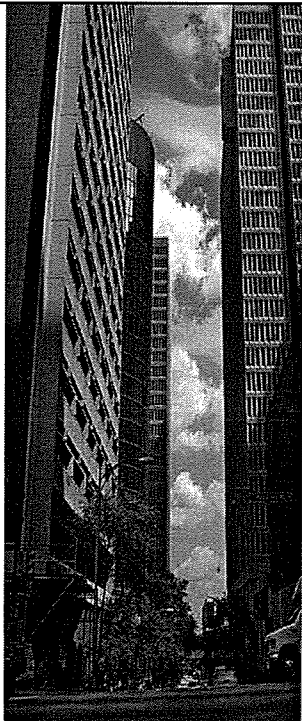
- Important economic developments sites: Downtown, Midtown and Buckhead
- Site limitations, street light spacing, placement of utilities, requirements for canopies, tree grates and showering facilities are all spelled out in the code
- Pedestrian Space Plan lists required amenities to create a vibrant pedestrian friendly environment
 - Sidewalk, tree plantings, street furniture, public art, and open space requirements
- All developers are expected to fulfill the amenity requirements set forth in the code
- Ground floors of every buildings are required to have active uses



Atlanta: Midtown

•Midtown:

- To create an urban environment where people can live, work, meet and play
- Encourage a compatible mixture of residential, commercial, cultural and recreational uses
- Provide pedestrian oriented uses and activities along streets
- Divided into 3 subareas and consisting of 4 transit stations
- Each subarea offers different density bonuses
- Problems with policy and/or bonus programs faced in Midtown development are now been corrected for use in downtown area



Atlanta:

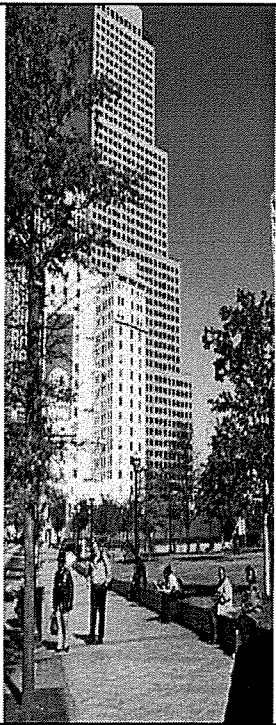
Midtown Subarea 1

- Maximum FAR without bonuses:
 - Residential: 3.2; Commercial: 5.0; Mixed-use: 8.20
- Maximum FAR with bonuses:
 - **Transit Station Area Bonus:** developments around the transit area are permitted a bonus of 3.2 times net lot area bonus
 - **Affordable Housing Bonus:** besides fulfilling the 20% requirement, any additional affordable housing added, provides a certain amount of density bonus (max 1.8 times net lot area)
 - **Ground-level retail Bonus:** developments that provide minimum of 20% street level retail are entitled to additional density bonus of up to 2.0



Atlanta

- Midtown Subarea 2 and 3 offers the same bonuses with focus more directed toward residential
- Commercial is only limited to street level (5% of total built area)
- Affordable Housing requirements should remain in place for 40 years and should have deed restrictions protecting the resale value of the units



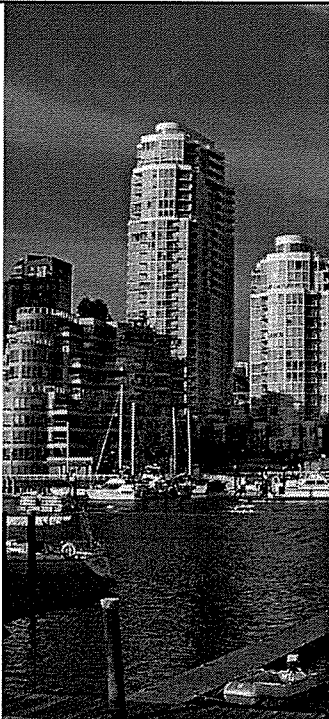
Atlanta

- **Transfer of Development Rights:**
 - Not many developers take advantage of air rights due to generous zoning
 - Historic Buildings
 - Both donor and recipient have to be located in the same area
- **Downtown:**
 - No bonus program in place just yet
 - However, an amendment is scheduled to seek approval of Council in January
 - Retail Bonus: encourage mixed-use
 - Affordable Housing Bonus: more specific about the size of affordable units (smallest unit can not be the smallest of it's type)
 - A good proportional mix of 1, 2, and 3 bedrooms
 - Stringent administration for deed restrictions



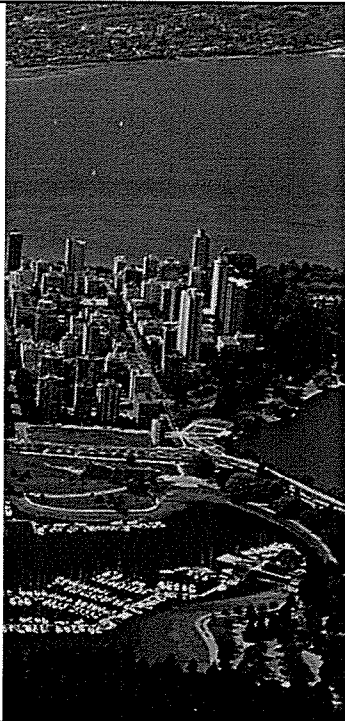
Housing in Downtown Atlanta

	Total # of developments	Total # of Units
Housing Developments	89	8,633
Apartments	32	4,511
Apartments (Planned or Under Construction)	2	604
Condominiums	42	2,742
Condominiums (Planned or UC)	13	776
Total	178	17,266



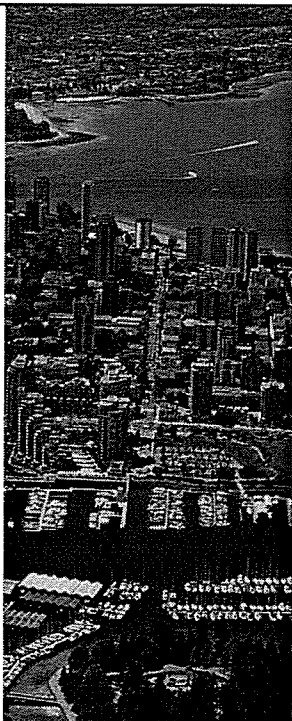
Vancouver

- City of Vancouver first introduced density bonus program in 1970s and it was quite unsuccessful because:
 - There was not a strong market for residential development downtown
 - Likewise, no strong market for mixed-use either
- In 1980's they developed a comprehensive downtown plan that would rezone certain parts of downtown under the 'living first' strategy:
 - It has doubled downtown Vancouver's population in the past 15 years



Vancouver

- **'Living First' growth strategy:**
 - Downtown South is comprised of 33 city blocks
 - Initial zoning: 3.0 FSR residential + 2.0 FSR commercial was not marketable at all
 - 8 million sq. ft. of commercial space was converted for residential use
 - 11,000 new residents were added to its 1,000 pre-existing residents

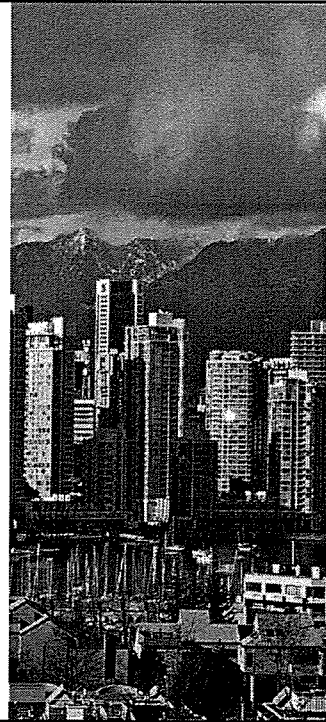


Vancouver

- In order to seek approval developers have to factor in the costs of adding amenities around their site during the initial purchase of a site
- However, in historic areas the city offers heritage incentive program that consists of:
 - Façade grants where the city will pay for the renovation of a historic building
 - Tax exemption for certain period of time
- **Affordable Housing Policy:**
 - Goal is to have 20% or more of all housing development city-wide to be low-income housing
 - Create a proportional social mix everywhere
 - In some areas, the city buys the land from a developer, builds social-housing and sells it to a non-profit organization at a discounted rate

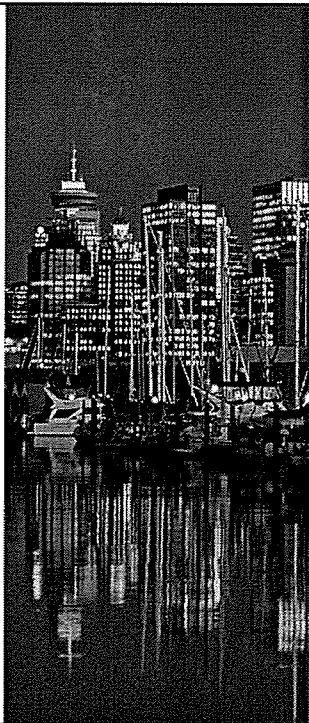
Vancouver

- **Affordable Housing:**
 - Development Cost Levy (DCL) where a portion of the levy generated is directed toward adding more social housing within that area
- **Affordable Housing Bonus:**
 - Director of Planning may approve permits where FAR increase being considered is 10% greater than maximum permitted under zoning
 - Bonus calculation:
 1. Value of land unencumbered by the low cost housing
 2. Value of land encumbered by the low cost housing (Value 1 – Value 2)/ Market Value of per buildable sq ft = Bonus Space



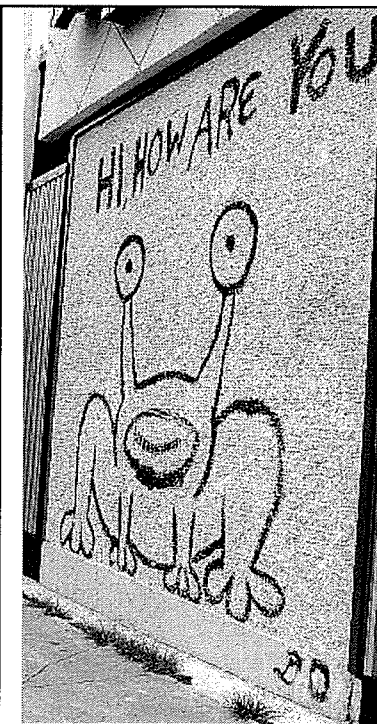
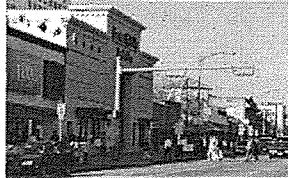
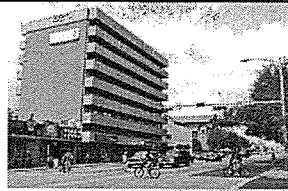
Vancouver

- **Density Transfer (TDR):**
 - Developers are more prone to take advantage of density transfer rights than affordable housing
 - Mainly used for historic conservation
 - Rarely used with open spaces or mixed-use
- **Grocery Stores in Vancouver Downtown:**
 - 15 years ago there were none
 - Today there are about 10-12 grocery stores within downtown
 - The City worked with the grocery stores to create a compact urban model suitable for downtown
 - Only 25,000-30,000 sq. ft. with parking underground



University Neighborhood Overlay

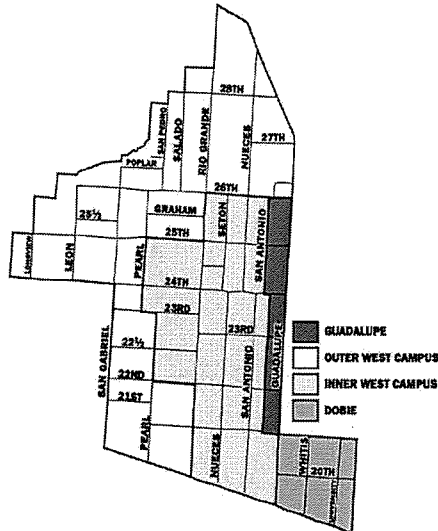
- The University Overlay corresponds to the area west of University of Texas and is comprised of students
- Currently, West Campus is the densest residential neighborhood in Austin
- However, it does lack street level amenities such as:
 - Shaded; wide sidewalks
 - Retail (small-scale grocery stores)
 - Pedestrian-oriented retail
 - Street lighting



UNO

- The University Overlay incorporates aspects of development bonuses and design guidelines:
 - Sets height restrictions throughout overlay area
 - Establishes setbacks in designated areas, streetscape improvements, building setbacks, site access
 - Reduces site area requirements
 - 20% of housing units must be affordable: 10% for 80% of median income, 10% for 50%-65% of median income or contributions can be made to the Housing Trust Fund
 - Relaxes and/or eliminates site development standards

Subdistricts of UNO



- Outer West Campus:
 - Designed as a Buffer Zone
 - Height range 45 to 90 feet
 - No parking garages
- Inner West Campus:
 - High-rise core
 - Heights up to 175 feet
- Guadalupe and Dobie:
 - Heights limited to 60 feet

Appendices

Appendix G Portland Report, PowerPoint, and City of Portland Arts and Culture Bonus Program

AUSTIN DESIGN COMMISSION

Density Bonus Task Force

PORTLAND, OREGON DELEGATION REPORT

April 9, 2007

“What are your Values for Density Bonus?” – Portland Design Commissioner

To facilitate its charge from the City Council to provide recommendations for a comprehensive Density Bonus Program for the city, the Austin Design Commission created a Density Bonus (DB) Task Force which meets every two weeks to review the DB requests and suggestions from other City entities, review the DB programs from other Cities, and formulate interim and final recommendations to the City Council regarding Density Bonuses and other Incentives to developers to improve the quality of the urban environment and make Austin a more livable city.

After reviewing the DB programs in several cities, the Task Force determined that the City of Portland, Oregon has one of the oldest and most successful density bonus programs in the country; and therefore in late November of 2006, a delegation from the Task Force, consisting of Eleanor McKinney, Holly Kincannon and Girard Kinney traveled to Portland to learn from the successes and failures of their program.

The delegation to Portland, Oregon met with Portland Planning Staff and Design Commissioners on November 30-December 1, 2006. The delegation researched the urban planning and design strategies for Density Bonus and other mechanisms that the city has employed for over twenty years. Following is a summary of the highlights of the meetings and city tours.

I. Regional Planning

Metro is a three county governmental body with regional oversight. After establishing shared Values through a public process, long-term goals were set through a 20 year plan that would bridge the needs of the metropolitan areas with the rural. Updates to the goals occur every 5 years. The state established an Urban Growth Boundary that encircles the Portland metro area. All of these mechanisms ensure a coordinated planning effort for transit, density and the preservation of farmland or other natural resources.

The availability of the Urban Growth Boundary tool in Oregon is one of the basic differences between their planning process and ours, and it must be stressed that unless and until Texas makes this tool available, we must use an incentive-based methodology in creating the denser, more efficient nodal development that has emerged as a major goal in our region.

II. City Planning and Implementation

There are four primary arms of city planning: Bureau of Planning, Portland Development Commission, Portland Office of Transportation and Bureau of Development Services. These three departments work together, work with the development community, and work with the neighborhoods to establish a “**Livable City**”. Large numbers of planners are employed at all three entities. At the Portland Development Commission alone there are 160 staff members. Due to the strength of the Planning entities, “in-house” planning documents have become part of the consciousness of the City, and there is broad coordination to achieve long-term restructuring solutions.

Portions of the city are divided into Tax Increment Financing (TIF) districts providing infrastructure and other city services. No more than 13 percent of the total land area of the city can be within a TIF, or urban renewal, district. Overall planning goals are established for the city center, but are also defined by district. Planning tools include district Planning/Design charettes; FAR/Heights; density bonus options, and transfers of development rights (TDRs). Goals of density follow the market, but also follow the characteristics of a district. Implementation tools include master developer agreements and system development charges (SDCs).

A. Planning and Design Charettes

District-wide Planning/Design charettes are held with property owners, developers, neighborhoods, planning staff, and planning and design commissioners. These charettes first determine the overall values, and then the specific goals for the district with input from all parties. In some subdistricts the design goals are re-evaluated every two years to determine if the original goals are being implemented, if these goals need to be modified or enhanced, and if incremental changes resulting from new development call for a reassessment of the original goals.

B. FAR and Heights

Floor area and height bonus options are offered as incentives to encourage facilities and amenities that implement the Central City plan.

FAR and Height maps are used to shape the city’s growth and to achieve certain goals such as increasing urban core density, protecting view corridors, preserving the character of historic districts, protecting and accessing open space and generally enhancing the urban form. Planners use techniques such as stepping down to the neighborhoods or waterfronts to carefully “sculpt the city” and strengthen compatibility. FAR and Heights differ per district and reflect the goals of each district. FAR is determined by infrastructure capabilities. Parking counts against FAR unless below grade. The range of

allowable FAR is from 18:1 to 2:1. The range of allowable height is 460'-75'. Concern for tall buildings creating "shadows on the parks" limits heights on the South and West sides to 100' maximum. Also, scenic overlays protect visual access to natural resources.

C. Density Bonus Options

The Portland's Density Bonus program has been in operation since 1990. The allowable FAR increase provided by density bonus options is 3:1. They have continued to update the program through the decades to include options such as: Residential Use, Day Care, Retail Use, Percent for Art, Open Space, Biking/Locker Room Facilities, Affordable Housing, Sustainability, Underground Parking, etc. The priorities for Density Bonus options are established by the district according to their values. In some sub districts top priority items have to be used first by any new development. They are in the process of updating their program now to streamline the number of options in order to target certain goals.

Portland City Staff Recommendation: The staff highly recommended that Austin keep our FAR at the current level in order to negotiate the remaining height with Density Bonuses.

D. Transfer of Development Rights (TDRs)

TDRs allow the transfer of entitlements on a given piece of property to another site. Portland, like many other cities, uses this powerful tool to limit height, reduce density, preserve historic buildings and create open space where it is needed by allowing those entitlements (development rights) to be transferred to another location in the city where those entitlements were not previously existent. As an example, the city uses TDRs to generate open space both on the project level and the district level. If the project includes a public plaza, then the development right on that portion of the site can be transferred to the adjacent structures, allowing them to be denser, higher, or to contain uses not previously allowed. On the district level and according to the district plans, development rights on entire blocks has been transferred to neighboring projects. In this way, new downtown open space has been generated for residents to use and enjoy.

Portland City Staff Recommendation: Limit use of TDRs to match district wide goals only. Density Bonus Options are sometimes a preferred mechanism for specific districts.

E. Master Developer Agreements

Developer agreements are generated to ensure commitment to the district plans and goals. The Portland Development Commission administers these agreements. In the developer agreements, the city commits to providing

financial assistance or infrastructure in exchange for developers adherence to district goals related to issues such as open space, streetscape amenities, affordable housing and density requirements and Density Bonus options. These agreements may also divide the responsibility of who pays for amenities and when they must be implemented to ensure that amenities and infrastructure are in place in a timely manner to support new residents and businesses and to encourage additional redevelopment actions in the district.

F. System Development Charges (SDCs)

System Development Charges are built into any development of a certain size and are administered by the Bureau of Development Services. The SDCs are per unit and cover such items as infrastructure, parks, environmental services, transportation, etc. Typical charges are approximately \$10,000-12,000 per unit. These charges shift the burden of paying for essential infrastructure, such as roads, parks, sewage and stormwater, to developers who are increasing demands on these public services, rather than the average tax payer because new impacts are not addressed solely by the City's General Fund. In other local jurisdictions SDC's are also used to support the school district.

Density Bonuses are also reviewed by the Bureau of Development services prior to receiving any construction permits.

III. Land Use and Transportation

A. Parking

The parking and access regulations implement the Central City Transportation Plan by managing the supply of off-street parking to improve mobility, promote the use of alternative modes, support existing and new development, maintain air quality and enhance the urban form.

There are six different kinds of parking and each is regulated differently. Generally, Growth, Preservation, and Residential/Hotel Parking are allocated based on FAR or dwelling units. The remaining parking types include Visitor parking, Undedicated General parking, and Accessory parking. Depending on the districts, regulations regarding access, landscaping, location and mixed-use requirements will vary. For example, surface parking is not permitted next to a rail line or within historic districts. The coordination of private parking garages with transit is of note as well as, the requirement for active ground floor uses.

Another regulation of note is that maximums on parking spaces are required per project with no minimums in the Core area. A powerful incentive to provide underground parking is achieved by counting the portion of the parking structure that is above ground in the FAR, but NOT counting the

portion that is below ground against the FAR. The amount of underground parking within the Central City is substantial even common. Regardless of the design challenges that accompany urban growth such as the preservation of historic properties or confronting watershed requirements, planners and developers have recognized the appropriate land-use that underground parking provides.

For some public parking, seven city parking garages are managed by a private entity established through an RFP process. Rates are lower than typical private garages. They have a “smart park” program that charges the same fees as a parking meter on the street.

B. Housing

Affordable Housing is heavily subsidized by the city to moderate the cost of the land and construction. Various sources, Federal, State, and local funding sources are used to subsidize affordable housing throughout the city and region. Within the City’s TIF districts there is a new policy that requires 30% of all TIF generated to be used within the district to develop affordable housing.

Workforce Housing (80% to 120% MFI) is currently subsidized less than low, low income housing (30% MFI and lower, and occasionally 30% to 60% MFI), but this may not always be the case. Smaller, more efficient units provide options for first time buyers. Typical purchase price is \$260,000.

C. Transit

Connecting the city and region was a highly sophisticated transit system including buses, streetcars, and light rail. Clearly, the goal of residential density throughout the city was shaped by, and then supported by, the transit system. Public transit is seen as a key infrastructure within the city, and zoning regulations are structured to be transit supportive. No density bonus is given for transit access per se; however, transit is built into the base fabric of the regulatory structure. In particular, parking requirements, allowed development intensities, systems development charges, and design all vary to some extent based on the proximity and level of transit.

IV. Portland Design Commission (DC)

The Design Commission is composed of design professionals and developers. In order to ensure that their design commission has a strong structural relationship with their Planning Commission and their Regional Arts and Culture Council (RACC), their City Council appoints one individual to sit on both the Design Commission and the Planning Commission, and another individual to sit on both the Design Commission and the RACC. These joint

appointments ensure coordination and information exchange among three complimentary governmental bodies. The Design Commission generated its first set of guidelines in 1990. From the adoption of the guidelines, the commission was charged with conducting mandatory reviews of all projects in the downtown zone. The guidelines are periodically updated with the most recent update occurring in 2004.

The DC review is not limited to the guidelines. The guidelines are not seen as prescriptive, but more as providing direction for the discretionary review process. For each project, the DC determines if the applicable guidelines have been met.

The applicant is required to present specific descriptive materials for the review. The materials include digital and physical models of the area surrounding the project; existing photographic elevations of the streetscape adjacent to the existing site and across the street; proposed building elevations, floor plans, and streetscape plans. In some subdistricts information demonstrating how a proposal affects a six square block area may be required to ensure consistency with or an enhancement of existing urban design context. A digital model of the entire city is maintained by the Bureau of Planning for use by the Development Commission and other interested parties. Developers are required to provide digital 3-D Modeling information to plug into the overall model.

The review process is formatted in the following manner: *Pre-Application*, *Design Advise Review*, and *Final Design Review*. The Design Advise Request is voluntary but is heavily used by developers as means to get early input and to expedite the final review process. Projects are encouraged to come in at an early stage for Pre-Review in order to receive input on the priorities of the commission.

The DC review looks carefully at design detail of the project from review of how the project fits within its overall context, to the physical layout, to density bonus options, to façade treatments, etc. A development is required to comply with the determinations of the DC review prior to receiving any construction permits. Our research indicates that the interaction between the development community in Portland has matured to the point where determinations by the DC are seldom challenged and that when they are, they are generally upheld.

V. Portland City Tour

The delegation was given a transit and walking tour of the two city districts: the Pearl District and South Waterfront. It was evident that each district had different values and goals as demonstrated by the physical development.

A. Pearl District

The Pearl District was defined by mid-rise mixed use and some pure residential developments with high attention to detail and human scale. Density bonuses encouraged these developments in the beginning, but are now no longer needed. Common elements included retail at the ground floor, street wall treatments with recessed upper floor masses, screened parking garages, etc. In particular, we were able to see the following:

- parking garages with detailed façade treatments in which one could not distinguish the garage from occupied space
- garage openings with horizontal sliding or overhead doors providing visual masking of the interior of the garage entrance except during vehicle ingress and egress.
- corner building notches to provide more pedestrian space and entries to the building
- garden roofs at the level where the upper floors are set back (recessed) from the street wall.
- entire park blocks of highly designed urban open space
- streetscape treatments connected the park blocks to one another and to the river.

B. South Waterfront District

The South Waterfront District was defined by high rise developments, surrounded by open space. Common elements included view and pedestrian access corridors to the waterfront, sophisticated storm water management treatments, and set aside open space for a future park. In particular, we were able to see:

- 100' maintained set backs from the river with benches and trails
- heights stepping down to the river - mid-rise development stepping down to the river and sleek towers of metal and glass set back further back (75', 125', 250', up to 325' maximum; average height 175')
- LEED certified buildings, including one LEED Platinum hospital
- underground parking
- pedestrian access through the district to the waterfront
- density bonus eco-roofs with intensive and extensive treatments
- parking lots with landscape plantings as storm water treatment
- natural detention ponds
- how density bonuses created extra greenway set back
- how partial funding for two entire blocks of contiguous open space are paid for by development bonus provision (\$5.00 per s.f. paid into an open space fund).

CONCLUSION

In conclusion, urban planning and design in the City of Portland offers a 25 year comprehensive working model for the city of Austin to explore. All of their planning and implementation activities work toward common values and goals. They appear to be ten to twenty years ahead in terms of cooperation of planners, designers, developers, and neighborhoods to create a city that will benefit everyone.

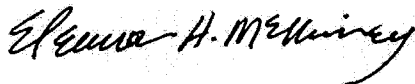
We were impressed that the City of Portland allocated extensive resources to in-house planning activities and support staff in order to achieve their Values and Goals. It was evident from the plans and reports generated by staff and the follow-up efforts that urban planning and design were a high priority for the city. We were also impressed by the results in physical urban form and detail from the planning activities. With the Downtown Plan, the City of Austin has an opportunity to increase its focus on Urban Planning and Design in order to achieve our unique Values and Goals.

Through the efforts of the Portland delegation, we have set the stage for a relationship of mutual exchange and collaboration with the Bureau of Planning and the Design Commission. We were impressed with the courtesy of Portland city officials, staff, and developers to our delegation. Already, we have shared planning and design documents to the benefit of both cities. We hope that we will be able to further enhance this relationship by continuing to learn from each other and share resources. We understand that some Austin City Staff may be traveling to Portland to visit with their peers in order to more thoroughly benefit from lessons to be learned.

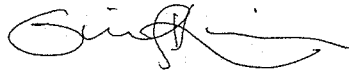
In reciprocation, the City of Austin may want to extend an invitation to the staff and public officials, who were so generous with their time while we were in Portland, to come to Austin and visit with our staff and officials in a similar format. Finally, we are encouraged about a possible future delegation from Austin developers to Portland to learn more about the remarkable relationship that exists among developers, government officials and entities, and neighborhoods to achieve common Values and Goals.

Thank you to the Austin City Council for support of the task force delegation to Portland. We hope that the research of the Density Bonus program and other mechanisms will serve to enhance the quality of life for our citizens in years to come. We remain available for any further questions, presentations, and discussion.

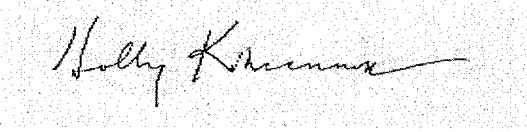
Respectfully submitted,

A handwritten signature in black ink, reading "Eleanor H. McKinney". The signature is fluid and cursive, with a long, sweeping underline that extends to the right.

Eleanor McKinney, Chair



Girard Kinney, Vice-Chair



Holly Kincannon, Former Secretary/Parliamentarian
(all members of the Design Commission Density Bonus Task Force)

Portland, OR Delegation Report

Austin Design Commission

Density Bonus Task Force

Eleanor McKinney, Chair

Girard Kinney, Vice Chair

Holly Kincannon, former Secretary

Presented to:

Austin City Council

Land Use & Transportation Committee

April 9, 2007

Meetings and City Tour

Portland Design Commissioners/Planning Staff

November 30-December 1, 2006

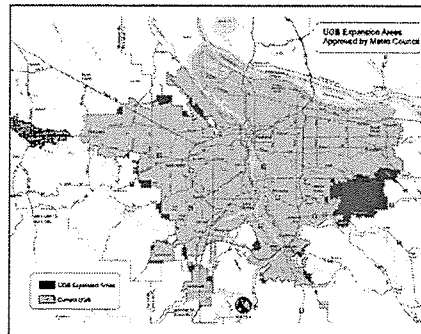
Purpose: To research Portland's urban planning and design strategies for Density Bonus and other mechanisms to achieve a "Livable City"

"What are your values for Density Bonus?"

- Portland Design Commissioner

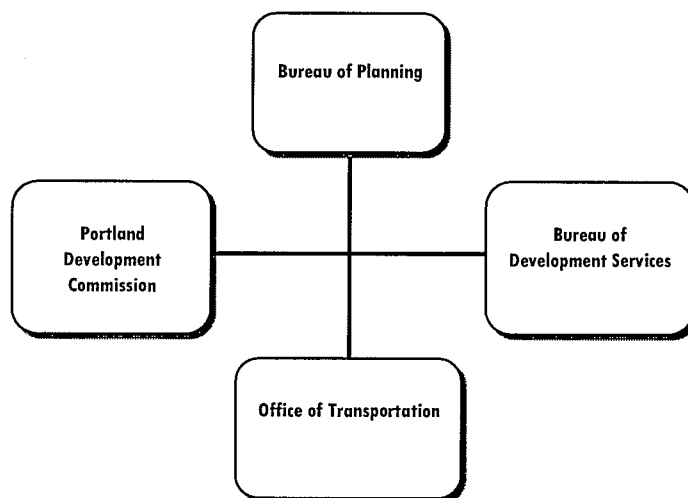
Regional Planning

- *Metro* - 3 county governmental body with regional oversight
- Long term goals set through 20 year plans (updates every 5 years)
- Urban Growth Boundary



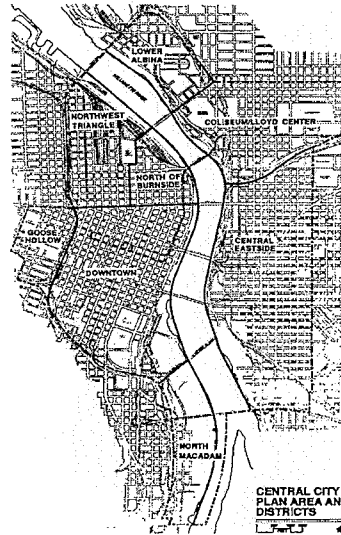
City Planning and Implementation

City Planning Departments:



City Planning and Implementation (cont.)

■ Portland Central City TIF Districts

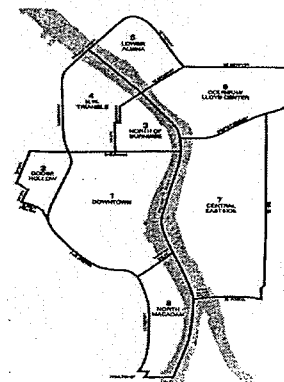


City Planning and Implementation (cont.)

Planning and Design Charrettes

- City Center and by district to establish goals
- Goals re-evaluated every two years

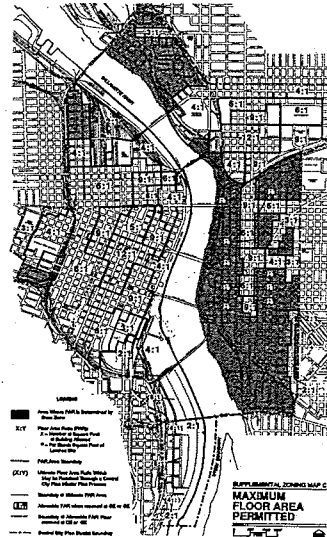
District Policies



City Planning and Implementation (cont.)

FAR and Heights

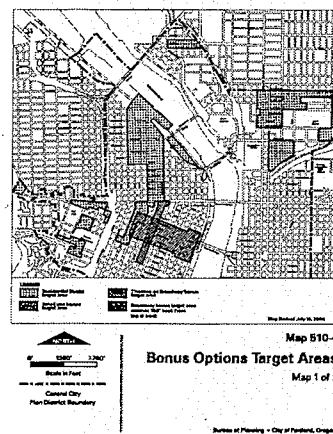
- Used to sculpt the city and to achieve goals
- Differs by District
- Range of allowable FAR 18:1 to 2:1
- FAR based on infrastructure
- Range of allowable height 460-75'
- Prevent 'shadows on the parks' — limit ht. to 100'



City Planning and Implementation (cont.)

Density Bonus (DB) Options

- DB program since 1990:
 - residential use
 - day care
 - retail use
 - percent for art
 - open space
 - biking/locker room facilities
 - affordable housing
 - Sustainability
 - underground parking



City Planning and Implementation (cont.)

Density Bonus (DB) Options

- Priorities established by district
- Currently streamlining DB options to target goals

PORTLAND STAFF RECOMMENDATION:

- **Keep FAR at current level in order to negotiate with DB**

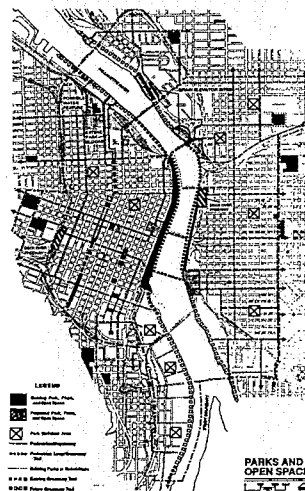
City Planning and Implementation (cont.)

Transfer of Development Rights (TDRs)

- TDR used to: limit height, shape density, preserve historic buildings and generate open space
- Priorities established by district

PORTLAND STAFF RECOMMENDATION:

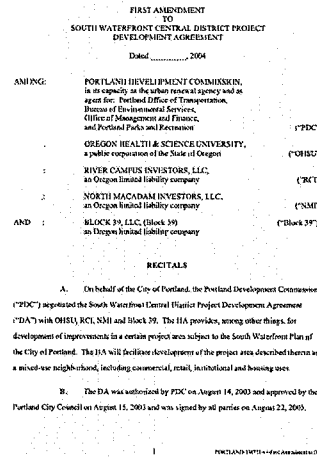
- Limit use of TDRs to match district wide goals only



City Planning and Implementation (cont.)

Master Developer Agreements

- City commits to financial assistance or infrastructure
- Developer commits to district goals related to open space, streetscape amenities, affordable housing, density requirements and DB options
- Timeline determined for provision of infrastructure or amenities



City Planning and Implementation (cont.)

System Development Charges (SDCs)

- Per unit basis / \$10-12,000 per unit
- Covers infrastructure, parks, environmental services, transportation, etc.
- Administered by Bureau of Development Services

Land Use and Transportation

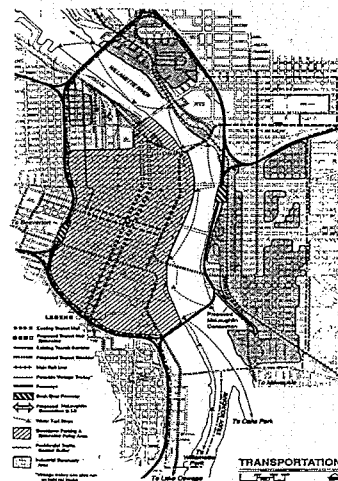
Housing

- Affordable Housing (AH) heavily subsidized to moderate cost of land and construction
- 30% of TIF generated in districts to be used for Affordable Housing
- Workforce housing subsidized less than low income housing
- Typical purchase initial purchase price is \$260,000

Land Use and Transportation (cont.)

Transit

- Public transit as key infrastructure: buses, streetcars, light rail
- Zoning regulations are transit supportive
- Parking requirements, allowed densities, systems development charges and design all vary based on proximity and level of transit

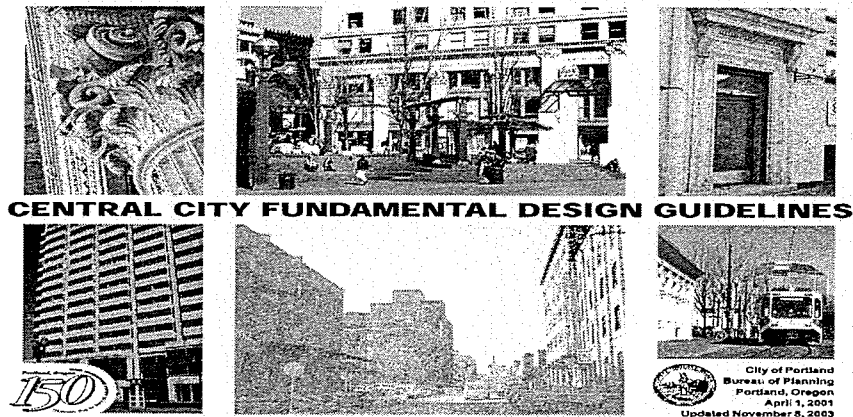


Land Use and Transportation (cont.)

Parking

- Growth, preservation, residential/hotel parking allocated based on FAR and heights
- Other types: visitor, general, accessory
- Underground parking not counted toward FAR, 'Smart Park' fees the same in public garages as on the street

Portland Design Commission



Portland Design Commission

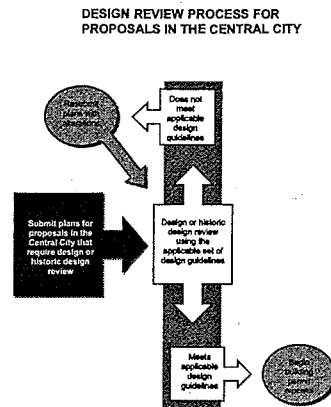
- Composition: design professionals and developers
- Joint appointment to Design Commission and Planning Commission
- Joint appointment to Design Commission and Regional Arts and Cultural Council
- First set of Design Guidelines in 1990; update in 2004
- Mandatory review of all projects within downtown zone
- Guidelines provide direction for discretionary review

Portland Design Commission (cont.)

- Required applicant presentation materials:
 - digital and physical 3D models
 - existing streetscape elevations
 - proposed building elevations
 - floorplans
 - streetscape plans
- Digital 3D model of entire city maintained by Bureau of Planning

Portland Design Commission (cont.)

- Review process:
 - pre-application (encouraged)
 - design advise review (voluntary)
 - final design review (required)
- Review covers site planning and detail design
- Determinations upheld



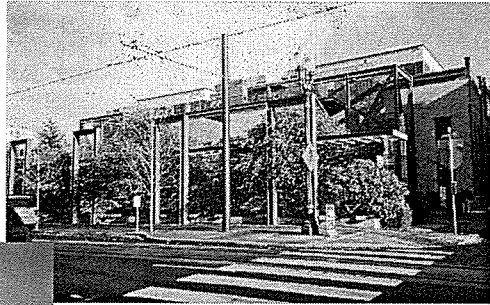
Portland City Tour

Pearl District

- Historic preservation and adaptive reuse
- Mid-rise residential
- Parking garages with detailed façade treatments
- Garage openings with screening doors
- Corner building notches with increased pedestrian space
- Screen surface parking lots
- Garden roofs at street wall set-back
- Park blocks of highly designed urban open space
- Streetscapes connecting the park blocks to the river
- Pedestrian, bicycle, open space connections

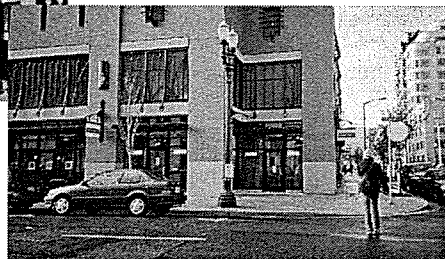
Portland City Tour

Pearl District



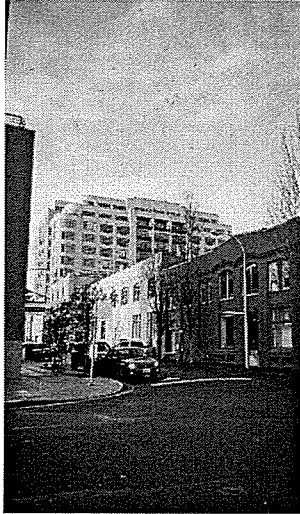
Portland City Tour

Pearl District



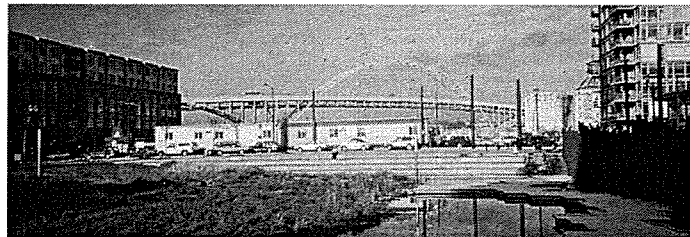
Portland City Tour

Pearl District



Portland City Tour

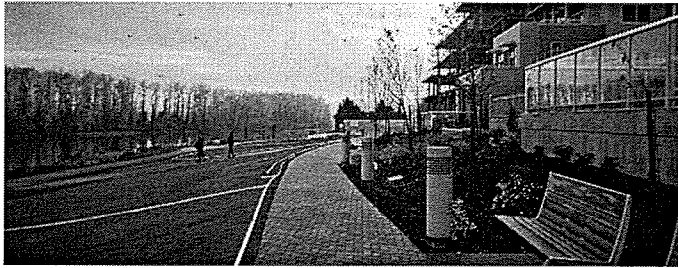
Pearl District



Portland City Tour (cont.)

South Waterfront

- 100' set backs from the river through density bonuses
- Heights stepping down to the river (75', 125', 250', up to 325' max.; average ht. 175')



Portland City Tour (cont.)

South Waterfront (cont.)

- LEED certified buildings, including one LEED Platinum hospital
- Underground parking
- South Waterfront transit connections (streetcar & aerial tram)



Portland City Tour (cont.)

South Waterfront (cont.)

- View and pedestrian access corridors
- Density bonus eco-roofs with intensive and extensive treatments
- Parking lots with landscape plantings as stormwater treatments



Portland City Tour (cont.)

South Waterfront (cont.)

- Natural detention ponds
- DB pay in lieu of created two blocks open space (\$5.00 per s.f. paid into an open space fund)



Conclusion

- City of Portland as a working model for successful urban planning and design for over 25 years
- Impressive allocation of City resources to in-house planning activities support staff, and collaboration with citizens and developers
- Impressive results in urban form and detail from planning activities
- With the Downtown Plan the City of Austin has an opportunity to increase its focus on Urban Planning and Design in order to achieve out unique Values and Goals

Conclusion (cont')

- Delegation to Portland set the stage for mutual exchange and collaboration
- Impressive courtesy of city officials, staff and developers to our delegation
- Result was sharing of planning and design documents between both cities for mutual benefit
- In reciprocation, the COA may want to extend an invitation to Portland officials and staff to visit Austin
- Possible future delegation from Austin developers to Portland to learn from the relationship between developers, government and citizens to achieve Values and Goals



REGIONAL ARTS & CULTURE COUNCIL

Floor Area Ratio Bonus Program

City Of Portland

Procedures and Guidelines for Private Developers

Public art has contributed to Portland's character and vitality since the turn of the century when the first statues and fountains were donated to the city by private citizens. Since the inception of the Percent for Public Art program in 1980 the city has received international recognition for such impressive works as "Portlandia," and the "Spectral Light Dome" in the Performing Arts Center. Recent well-received additions include Larry Kirkland's "Garden Stair" and its companion pieces at the Central Library, and Don Merkt's "Water, Please" at Portland's Water Pollution Control Lab. In recent years, public art has been populating neighborhoods outside the city center, in parks, community centers, and policing facilities, to name a few. Public Art enriches our urban landscape by engaging the eye, mind and spirit. It creates a sense of place and identifies public spaces, drawing citizens into them and provoking dialogue about what our City should look and feel like. A city rich in public art is a museum without walls because the artworks are so accessible to citizens. Public art also helps to create high aesthetic and design standards for all types of building projects.

Around the country, private developers are finding that commissioning art is more than good citizenship. It's good business. By enhancing the overall quality of a project and giving it a unique character, not achievable in other ways, onsite art helps make space more rentable at higher rates. Public art often becomes a "landmark" itself, helping a building to stand out from the crowd.

Commissioning art needn't be mysterious. It can be a revealing and engaging process. Steven Knapp, in an article, "Working With Artists: A Developer's Guide," (*UrbanLand*, September 1987) points out that "choosing and working with an artist is much the same as selecting an architect or an advertising agency. A good track record, a feeling that the chemistry is right, and a stringent review process are elements that make the choice work." Bringing an artist into the working team can add a fresh and exciting aspect to the project.

Portland offers specific incentives for private developers who incorporate public art into their projects. These guidelines were developed by the Regional Arts & Culture Council, RACC, to describe the City's Percent for Art Bonus Program and its approval procedures. It is hoped that these guidelines will encourage developers to include artists in building design teams and will demystify the process of selecting and installing project-enhancing art. Works commissioned under this program will be a great source of pride for building owners and the community.

SUMMARY

The Portland City Council adopted the Percent for Art Bonus Program on March 24, 1988, as part of the Central City Plan, Section 33.702.060.4. It is one of several programs which provide bonus floor area ratio as an incentive to develop the facilities and the urban amenities specified in the Plan.

108 NW 9th Avenue, Suite 300, Portland, Oregon 97209.3318

Tel: 503.823.5111 | Fax: 503.823.5432 | TDD: 503.823.6868 | Email: info@racc.org | www.racc.org
Portland Report, PowerPoint, & Arts and Culture Bonus Program 131

DESCRIPTION

Development projects which commit one percent of their total construction cost to public art may receive floor area ratio bonus of 1:1. Projects committing more than one percent to public art receive additional bonus floor area ratio of 0.1:1 for each additional 0.1 percent of the project's total construction cost devoted to public art, up to a maximum floor area ratio bonus of 2:1. Total construction costs are the sum of all construction costs shown on all building permits associated with the project. For projects involving the expansion of buildings, the allocation for public art will be a percentage of the combined costs of new construction and the value of improvements to the property, as listed in the County Tax Assessor's records, at the time of application for Design Review.

Projects utilizing this bonus provision must place at least 25 percent of the project's public art budget into a Central City Public Art Trust Fund, maintained by the Regional Arts & Culture Council. Should a project's developer(s) choose to, the entire amount of percent for art funds may be placed in the Public Art Trust Fund. The Public Art Trust Fund is used primarily to purchase and install public art at other desirable sites in the Central City.

RACC approves the process and budget for selecting the artist(s), the artwork, and the location of the artwork. The public art provided will not satisfy any other provision of the City Code, State or Federal law.

In brief, there are three options for gaining the F.A.R. bonus.

- Allocate and spend 75% of 1%-2% of construction costs on a work(s) of art and contribute the remaining 25% directly to the Public Art Trust Fund.
- Contribute the full 1%-2% of construction costs to the Public Art Trust Fund.
- Contribute an amount greater than 25% of 1%-2% of construction costs to the Public Art Trust Fund, and dedicate the balance to on-site artworks.

STEPS IN THE PROCESS OF GAINING INCREASED F.A.R.

Program Procedures

These program procedures have been developed by RACC in conjunction with the Planning Bureau and review groups of developers, architects and artists experienced in public art. The process for gaining approval of F.A.R. bonuses parallels the regular steps necessary for approval of building projects by the City of Portland and is designed to fit within the usual timeline. Quick turn-around time on decisions is a high priority for RACC. In most cases this will be less than thirty days.

1. Initial Contacts with the Planning Commission and Regional Arts & Culture Council

Project developers are informed of the percent for art bonus and are referred to the RACC for further assistance. Developers are encouraged to contact RACC as soon as they are interested in this program.

The Public Art Program staff will advise the developer in applying these procedures to the specific project and will provide up to two hours of free consultation in the early stages of the project. RACC can advise the developer on the process for integrating artwork with projects, how to select and work with artists, and how to select an art consultant. A Public Art Manager will be responsible for tracking progress and insuring compliance with program guidelines through all stages of the project.

2. Pre-Application Conference with RACC

Development of the Art Plan

Developers who are applying for the Percent for Art Bonus Floor Area Ratio shall develop an Art Plan for discussion at a pre-application conference with RACC representatives. If project artist(s) have been selected by the time of this meeting, they are encouraged to attend. The Art Plan will:

- Specify the proposed split of funds between the Public Art Trust Fund and on-site art, and present a budget for the selection process and artwork(s);
- Describe in detail the developer's process for selection of artist(s) and artwork and how that process will foster collaboration among artist(s) and other building design team members;
- Identify the intended site(s), media, and materials of artwork(s)
- Describe the qualifying artwork, including artist concept drawings, if artwork has been selected
- Detail the schedule for the selection, fabrication and installation of the artwork
- Describe plans for maintenance of the artwork(s).

3. Design Review Hearing

The Public Art Advisory Committee is authorized to grant formal approval of Art Plans submitted in applications for F.A.R. bonuses. If possible, the Committee will make its decision prior to the Design Review Hearing. RACC findings in regard to the Art Plan will be incorporated into the Planning Bureau's conditions for approval, which are to be accepted and recorded by the developer through a Covenant with the City.

4. Application for Building Permit

At the time of the application for a Building Permit the project developer must make the full contribution to the Public Art Trust Fund and submit a progress report on the art project to RACC. This report will serve as the basis for RACC's submission of a letter of approval, which the developer must include, with the application for a Building Permit. The Planning Bureau will not sign off on the Building Permit without assurance from RACC that it has received the Public Art Trust Fund contribution and approves the progress report.

5. Application for Building Occupancy Permit

The installation of artwork should be completed before a Certificate of Occupancy is granted. At the time of application a final written report, including visual documentation (slides, photos) and a detailed statement of project expenses must be submitted to RACC. Copies of contracts with art consultant(s) and artist(s) must be attached.

In some cases it may be impossible to complete installation of artwork prior to granting the Certificate of Occupancy. In this case, RACC has the authority to recommend to the Bureau of Buildings that the Certificate of Occupancy be granted upon posting of a performance bond in the full amount dedicated for the artwork. RACC must approve a timeline for completion of the art project.

COLLABORATION & INTEGRATION

Collaboration among artists, architects, landscape architects and engineers is encouraged so that artworks may be fully integrated into building designs. It is important that artists be brought into the design process as early as possible. In some cases, Art Plans may be approved which allocate funds for a portion of the architectural fees if it is determined that such work is an integral part of the proposed artwork and would not have been done otherwise.

WORKING WITH ARTS CONSULTANTS AND ARTS ADVISORY COMMITTEES

Project developers should work with an art consultant and/or art advisory selection committee in the selection of an artist(s) and artwork. The art consultant and advisory committees can give expert assistance on selection procedures, technical concerns, and on the uses, appropriateness, quality, and variety of art options. An art consultant can oversee the collaborative process from the initial stages of developing an Art Plan through installation of the art, and may even provide assistance with public relations and educational outreach in conjunction with dedication of the project. The ability to "troubleshoot" throughout the process can be crucial,

Up to 10% of the on-site art budget can be used toward an art consultant's fees based upon an hourly or daily rate, which is agreed upon in advance. However, RACC encourages paying the art consultant from other elements of the construction budget. If an advisory committee is used to guide the selection process its makeup should reflect the breadth of involvement in the project. Participants may include the developer, project architect, landscape architect, neighborhood representative, and one or more artists or art professionals knowledgeable in the area of public art.

SELECTION OF ARTIST (S)

An artist is considered to be a practitioner in the visual arts, generally recognized by critics and peers as a professional of serious intent and recognized ability who produces works of art and is not a member of the project architectural firm. Any of the following methods of selecting an artist(s) are possible:

- **Open competition.** A request for proposals is widely distributed inviting artists to submit resumes, slides, and a short proposal. When the selection is narrowed to a few finalists, it is desirable to commission the artists to produce models or working drawings which specifically address suggested materials, construction of the artwork and placement at the site. A final decision is made after review of the models and drawings.
- **Invitation.** One or more artists are invited to submit proposals. If finalists are chosen, it is desirable to commission them to produce models or working drawings, which specifically address suggested materials, construction of the artwork and placement at the site.
- **Direct purchase.** A completed work of art is selected for the site.

The developer shall enter into a written contract with the final selected artist(s). RACC can provide sample contracts.

SELECTION OF ART

RACC encourages the selection of works of art which show:

- Strong artistic excellence
- Appropriateness to the site (working well within the scale and nature of the site)
- Integration into the design of the building
- Recognition of accessibility, durability, security, maintenance and safety requirements.

All forms of original creations of visual art are eligible, including but not limited to:

- Paintings of all media, including both portable and permanently affixed works
- Sculpture which may be in the round, bas-relief, high relief, mobile, fountain, kinetic, electronic, architectural, etc., in any material or combination of materials
- Other visual media including, but not limited to prints, drawings, stained glass, lighting, calligraphy, mosaics, photography, moving image art, ceramics, fiber and textiles, wood, metals, paving, plant materials, plastics, crafts, artifacts, reliefs, mobiles, fountains, kinetic or electronic artworks, or other materials or combination of materials.

The following items do not meet the intent of this program:

- Reproductions, by mechanical or other means, of original works of art
- Decorative, ornamental, or functional elements designed by the architect or consultants engaged by the architect, as opposed to an artist commissioned for this purpose
- Those elements generally considered to be components of a landscape architectural design, except where these elements are designed by the artist and are an integral part of the project artwork
- Art objects which are mass-produced of standard design, such as playground equipment or fountains
- Directional or other functional elements, such as supergraphics, signs, color coding, maps, unless designed and/ or executed by an artist

- Modifications in or improvements to building surfaces or structural elements of the building.

THE PERCENT FOR ART BUDGET

The percent for art budget applies to “hard” construction costs. The following are subtracted from the estimated project construction costs before making the percent for art allocation:

- Engineering and administrative costs
- Costs for fees and permits
- Loan fees and interest during construction
- Insurance
- Environmental compliance costs
- Real estate commissions and taxes
- Legal fees
- Advertising fees
- Architect’s fees
- Land costs

Eligible art expenditures include:

- The work of art
- Design fees for artists invited to submit proposals
- Selected artist(s)’ operating costs
- Travel related to the integration of the art with the project
- Transportation of the work to the site
- Installation of the artwork
- Identification plaques and labels
- Frames, mats, mountings, anchors, containments, pedestals, or materials necessary for the installation, location, or security of the artwork(s)
- Photographs of completed works
- Expenses for special advisors or consultants, not to exceed 10% of the total

Ineligible art expenditures include:

- Art exhibitions and educational activities
- Architect's fees
- Land costs
- Utility fee associated with electrical, water, or mechanical services used to activate the work(s) of art
- Registration, dedication, unveiling, security and publicity connected with work(s) of art after selection

LOCATION OF ART

Maximum visibility of the art is of primary concern. Art must be sited on the exterior of the building and/or at location(s) clearly visible and freely accessible by the public from the sidewalk during daylight hours. The developer will guarantee public access to the artwork(s). The art is a permanent part of the development and must remain in place for the life of the building. Works may be portable, as well as fixed, as long as the art is always at or adjacent to the site and accessible to the public.

LIGHTING

Exterior artwork(s) will be adequately lit so as to be clearly visible from sidewalks during evening hours. Interior artworks will be adequately lit during all hours of public access.

OWNERSHIP AND MAINTENANCE

All art included in a specific project belongs to the project owner. The artist retains copyright of the art. The artist, project developer and architect (if appropriate) should be credited for their roles in the art project through a plaque located near the artwork.

Art must be maintained and repaired as necessary in accordance with accepted curatorial standards set by RACC. Stolen or vandalized art must be replaced or repaired as close as possible to its original form. So far as practical, in the event repair of a work is required; the responsible artist(s) shall be notified and given the opportunity to complete the repair for a reasonable fee. If the original artist is not available, a qualified professional, such as an art conservator, shall conduct any necessary repairs.

Installation, future preservation, maintenance, and replacement if necessary, of the public art provided within this bonus program is assured for the life of the development project by the property owner executing a covenant with the City in conformance with the requirements of section 33.702.090 of the Portland Zoning Code, Covenants with the City. The public art provided may not also satisfy other provisions of the City Code, State or Federal law.

In developing these guidelines, the Regional Arts & Culture Council has tried to allow for a flexible approval process which will result in exciting, high quality art. If developers wish to pursue a direction not indicated in the guidelines, they should contact the Council.

Appendices

Appendix H Seattle Municipal Code Documents



Seattle Municipal Code

Information retrieved July 18, 2007 2:10 PM

Title 23 - LAND USE CODE

Subtitle III Land Use Regulations

Division 2 Authorized Uses and Development Standards

Chapter 23.49 - Downtown Zoning

Subchapter I General Provisions

SMC 23.49.011 Floor area ratio.

A. General Standards.

1. The base and maximum floor area ratio (FAR) for each zone is provided in Chart 23.49.011 A1.

Chart 23.49.011 A

2. Chargeable floor area shall not exceed the applicable base FAR

except as expressly authorized pursuant to the provisions of this chapter.

a. For new structures in DOC1, DOC2 and DMC zones allowing chargeable floor area above the base FAR, the first increment of chargeable floor area above the base FAR, shown for each zone on Chart 23.49.011 A.2, shall be gained by making a commitment satisfactory to the Director that the proposed development will earn a LEED Silver rating or a meet a substantially equivalent standard approved by the Director as a Type I decision. In these zones, no chargeable floor area above the base FAR is allowed for a project that includes chargeable floor area in a new structure unless the applicant makes such a commitment. When such a commitment is made, the provisions of SMC Section 23.49.020 **EE** shall apply. The Director may establish by rule procedures for determining whether an applicant has demonstrated that a new structure has earned a LEED Silver rating or met any such substantially equivalent standard, provided that no rule shall assign authority for making a final determination to any person other than an officer of the Department of Planning and Development or another City agency with regulatory authority and expertise in green building practices.

Chart 23.49.011 A.2

b. In DOC1, DOC2, and DMC zones, additional chargeable floor area above the first increment of FAR that exceeds the base FAR may be obtained only by qualifying for floor area bonuses pursuant to Section 23.49.012 **EE** or 23.49.013 **EE**,

or by the transfer of development rights pursuant to Section 23.49.014 **EE**, or both, except as provided in subsections A2c through A2i of this section.

7/18/2007

c. In the DOC1 zone, additional chargeable floor area over seventeen (17) FAR may be obtained only through the transfer of rural development credits, except as provided below in this subsection c. No chargeable floor area shall be allowed under this subsection unless, at the time of the Master Use Permit application for the project proposing such floor area, an agreement is in effect between the City and King County, duly authorized by City ordinance, for the implementation of a Rural Development Credits Program. If no such agreement is in effect, the chargeable floor area above the seventeenth FAR may be obtained according to the provisions of Section 23.49.011A2f.

d. In no event shall the use of bonuses, TDR, or rural development credits, or any combination of them, be allowed to result in chargeable floor area in excess of the maximum as set forth in Chart 23.49.011 A.1, except that a structure on a lot in a planned community development pursuant to Section 23.49.036 **EE** or a combined lot development pursuant to Section 23.49.041 **EE**, may exceed the floor area ratio otherwise permitted on that lot, provided the chargeable floor area on all lots included in the planned community development or combined lot development as a whole does not exceed the combined total permitted chargeable floor area.

e. Except as otherwise provided in this subsection A2e or subsections A2g or A2i of this section, not less than five (5) percent of all floor area above the base FAR to be gained on any lot, excluding any floor area gained under subsection A2a of this Section, shall be gained through the transfer of Landmark TDR, to the extent that Landmark TDR is available. Landmark TDR shall be considered "available" only to the extent that, at the time of the Master Use Permit application to gain the additional floor area, the City of Seattle is offering Landmark TDR for sale, at a price per square foot no greater than the total bonus contribution under Section 23.49.012 **EE** for a project facilities. An applicant may satisfy the minimum Landmark TDR requirement in this section by purchases from private parties, by transfer from an eligible sending lot owned by the applicant, by purchase from the City, or by any combination of the foregoing. This subsection A2e does not apply to any lot in a DMR zone.

f. Except as otherwise permitted under subsection A2h or A2i of this section, on any lot except a lot in a DMR zone, the total amount of chargeable floor area gained through bonuses under Section 23.49.012 **EE**, together with any housing TDR and Landmark housing TDR used for the same project, shall equal seventy-five (75) percent of the amount, if any, by which the total chargeable floor area to be permitted on the lot exceeds the sum of (i) the base FAR, as determined under this section and Section 23.49.032 **EE** if applicable, plus (ii) any chargeable floor area gained on the lot pursuant to subsection A2a, A2c, A2h, or A2i of this section. At least half of the remaining twenty-five (25) percent shall be gained by using TDR from a sending lot with a major performing arts facility, to the extent available. The balance of such twenty-five (25) percent shall be gained through bonuses under Section 23.49.013 **EE** or through TDR other than housing TDR, or both, consistent with this chapter. TDR from a sending lot with a major performing arts facility shall be considered "available" only to the extent that, at the time of the Master Use Permit application to gain the additional floor area, the City of Seattle is offering such TDR for sale, at a

7/18/2007

price per square foot not exceeding the prevailing market price for TDR other than housing TDR, as determined by the Director.

g. In order to gain chargeable floor area on any lot in a DMR zone, an applicant may (i) use any types of TDR eligible under this chapter in any proportions, or (ii) use bonuses under Section 23.49.012 ~~EE~~ or

23.49.013 ~~EE~~, or both, subject to the limits for particular types of bonus under Section 23.49.013 ~~EE~~, or (iii) combine such TDR and bonuses in any proportions.

h. On any lot in a DMC zone allowing a maximum FAR of seven (7), in addition to the provisions of subsection 2f above, an applicant may gain chargeable floor area above the first increment of FAR above the base FAR through use of DMC housing TDR, or any combination of DMC housing TDR with floor area gained through other TDR and bonuses as prescribed in subsection 2f.

i. When the amount of bonus development sought in any permit application does not exceed five thousand (5,000) square feet of chargeable floor area, the Director may permit such floor area to be achieved solely through the bonus for housing and child care.

j. Subsection A2a of this section shall expire five (5) years from the effective date of Ordinance 122054, and thereafter that first increment of floor area above the base FAR shall be zero (0).

k. No chargeable floor area above the base FAR shall be granted to any proposed development that would result in significant alteration to any designated feature of a Landmark structure, unless a Certificate of Approval for the alteration is granted by the Landmarks Preservation Board.

3. The Master Use Permit application to establish any bonus development under this section shall include a calculation of the amount of bonus development sought and shall identify the manner in which the conditions to such bonus development shall be satisfied. The Director shall, at the time of issuance of any Master Use Permit decision approving any such bonus development, issue a Type I decision as to the amount of bonus development to be allowed and the conditions to such bonus development, which decision may include alternative means to achieve bonus development, at the applicant's option, if each alternative would be consistent with the conditions of any other conditions of the permit, including Design Review if applicable.

B. Exemptions and Deductions from FAR Calculations.

1. The following are not included in chargeable floor area, except as specified below in this section:

a. Retail sales and service uses and entertainment uses in the DRC zone, up to a maximum FAR of two (2) for all such uses combined;

b. Street-level uses meeting the requirements of Section 23.49.009 ~~EE~~, Street-level use requirements, whether or not street-level use is required pursuant to Map 1G, if the uses and structure also satisfy the following standards:

(1) The street level of the structure containing the exempt space must

7/18/2007

have a minimum floor to floor height of thirteen (13) feet;

(2) The street level of the structure containing the exempt space must have a minimum depth of fifteen (15) feet;

(3) Overhead weather protection is provided satisfying the provisions of Section 23.49.018 **EE**.

c. Shopping atria in the DRC zone and adjacent areas shown on Map 1J, provided that:

(1) The minimum area of the shopping atria shall be four thousand (4,000) square feet;

(2) The eligibility conditions of the Downtown Amenity Standards are met; and

(3) The maximum area eligible for a floor area exemption shall be twenty thousand (20,000) square feet;

d. Child care;

e. Human service use;

f. Residential use, except in the PMM and DH2 zones;

g. Live-work units, except in the PMM and DH2 zones;

h. Museums, provided that the eligibility conditions of the Downtown Amenity Standards are met;

i. The floor area identified as expansion space for a museum, where such expansion space satisfies the following:

(1) The floor area that will contain the museum expansion space is owned by the museum or a museum development authority; and

(2) The museum expansion space will be occupied by a museum, existing as of October 31, 2002, on a downtown zoned lot; and

(3) The museum expansion space is physically designed in conformance with the Seattle Building Code standards for museum use either at the time of original configuration or at such time as museum expansion is proposed;

j. Performing arts theaters;

k. Floor area below grade;

l. Floor area that is used only for short-term parking or parking accessory to residential uses, or both, subject to a limit on floor area used wholly or in part as parking accessory to residential uses of one (1) parking space for each dwelling unit on the lot with the residential use served by the parking;

m. Floor area of a public benefit feature that would be eligible for a bonus on the lot where the feature is located. The exemption applies regardless of whether a floor area bonus is obtained, and regardless of maximum bonusable area limitations;

7/18/2007



City of Seattle Legislative Information Service

Seattle Municipal Code

Information retrieved September 26, 2007 8:20 AM

Title 23 - LAND USE CODE

Subtitle III Land Use Regulations

Division 2 Authorized Uses and Development Standards

Chapter 23.49 - Downtown Zoning

Subchapter I General Provisions

SMC 23.49.012 Bonus floor area for voluntary agreements for housing and child care.

A. General Provisions

1. The purpose of this section is to encourage development in addition to that authorized by basic zoning regulations ("bonus development"), provided that certain adverse impacts from the bonus development are mitigated. Two (2) impacts from such development are an increased need for low-income housing downtown to house the families of workers having lower-paid jobs and an increased need for child care for downtown workers.

2. If an applicant elects to seek approval of bonus development pursuant to this section, the applicant must execute a voluntary agreement with the City in which the applicant agrees to provide mitigation for such impacts. The mitigation may be provided by building the requisite low-income housing or child care facilities (the "performance option"), by making a contribution to be used by the City to build or provide the housing and child care facilities (the "payment option"), or by a combination of the performance and payment options.

B. Voluntary Agreements for Housing and Child Care. For each square foot of chargeable floor area above the base FAR to be earned under this section, the voluntary agreement shall commit the developer to provide or contribute to the following facilities in the following amounts:

1. Housing.

a. For each square foot of bonus floor area, housing serving each of the specified income levels, or an alternative cash contribution for housing to serve each specified income level, must be provided according to Chart 23.49.012 A.

b. For purposes of this subsection, a housing unit serves households up to an income level only if all of the following are satisfied for a period of fifty (50) years beginning upon the issuance of a final certificate of occupancy by the Department of Planning and

Development:

(1) The housing unit is used as rental housing solely for households with incomes, at the time of each household's initial occupancy, not exceeding that level; and

(2) The monthly rent charged for the housing unit, together with a reasonable allowance for any basic utilities that are not included in the rent, does not exceed one-twelfth ($1/12$) of thirty (30) percent of that income level as adjusted for the estimated size of household corresponding to the size of unit, in such manner as the Director of the Office of Housing shall determine;

(3) There are no charges for occupancy other than rent; and

(4) The housing unit and the structure in which it is located are maintained in decent and habitable condition, including adequate basic appliances, for such fifty (50) year period.

c. For purposes of this section, housing may be considered to be provided by the applicant seeking bonus floor area if it is committed to serve one (1) or more of the income groups referred to in this section pursuant to an agreement between the housing owner and the City executed and recorded prior to the issuance of the building permit for the construction of such housing or conversion of nonresidential space to such housing, but no earlier than three (3) years prior to the issuance of a master use permit for the project using the bonus floor area, and either:

(1) The housing unit is newly constructed, is converted from nonresidential use, or is renovated space that was vacant as of the date of this ordinance, on the lot using the bonus floor area, pursuant to the same master use permit as the project using the bonus floor area; or

(2) The housing is newly constructed, is converted from nonresidential use, or is renovated in a residential building that was vacant as of the date of this ordinance on a lot in a Downtown zone, and:

i. The housing is owned by the applicant seeking to use the bonus; or

ii. The owner of the housing has signed, and there is in effect, a linkage agreement approved by the Director of the Office of Housing allowing the use of the housing bonus in return for necessary and adequate financial support to the development of the housing, and either the applicant has, by the terms of the linkage agreement, the exclusive privilege to use the housing to satisfy conditions for bonus floor area; or the applicant is the assignee of the privilege to use the housing to satisfy conditions for bonus floor area, pursuant to a full and exclusive assignment, approved by the Director of the Office of Housing, of the linkage agreement, and all provisions of this section respecting assignments are complied with. If housing is developed in advance of a linkage agreement, payments by the applicant used to retire or reduce interim financing may be considered necessary and adequate support for the development of the housing.

d. Housing that is not yet constructed, or is not ready for occupancy,

at the time of the issuance of a building permit for the project intending to use bonus floor area, may be considered to be provided by the applicant if, within three (3) years of the issuance of the first building permit for such project, the Department of Planning and Development issues a final certificate of occupancy for such housing. Any applicant seeking to qualify for bonus floor area based on such housing shall provide to the City, prior to the date when a contribution would be due for the cash option under subsection C of this section, an irrevocable bank letter of credit or other sufficient security approved by the Director of the Office of Housing, and a related voluntary agreement, so that at the end of the three (3) year period, if the housing does not qualify or is not provided in a sufficient amount to satisfy the terms of this section, the City shall receive (i) a cash contribution for housing in the amount determined pursuant to this section after credit for any qualifying housing then provided, plus (ii) an amount equal to interest on such contribution, at the rate equal to the prime rate quoted from time to time by Bank of America, or its successor, plus three (3) percent per annum, from the date of issuance of the first building permit for the project using the bonus. If and when the City becomes entitled to realize on any such security, the Director of the Office of Housing shall take appropriate steps to do so, and the amounts realized, net of any costs to the City, shall be used in the same manner as cash contributions for housing made under this section. In the case of any project proposing to use bonus floor area for which no building permit is required, references to the building permit in this subsection shall mean the master use permit allowing establishment or expansion of the use for which bonus floor area is sought.

e. Nothing in this chapter shall be construed to confer on any owner or developer of housing, any party to a linkage agreement, or any assignee, any development rights or property interests. Because the availability and terms of allowance of bonus floor area depend upon the regulations in effect at the relevant time for the project proposing to use such bonus floor area, pursuant to SMC Section 23.76.026 ~~EE~~, any approvals or agreements by the Director of the Office of Housing regarding the eligibility of actual or proposed housing as to satisfy conditions of a bonus, and any approval of a linkage agreement and/or assignment, do not grant any vested rights, nor guarantee that any bonus floor area will be permitted based on such housing.

f. The Director of the Office of Housing shall review the design and proposed management plan for any housing proposed under the performance option to determine whether it will comply with the terms of this section.

g. The Director of the Office of Housing is authorized to accept a voluntary agreement for the provision of housing and related agreements and instruments consistent with this section.

h. Any provision of any Director's rule notwithstanding, it shall be a continuing permit condition, whether or not expressly stated, for each project obtaining bonus floor area based on the provision of housing under this subsection, that the housing units shall continue to satisfy the requirements of this subsection throughout the required fifty (50) year period and that such compliance shall be documented annually to the satisfaction of the Director of the Office of Housing, and the owner of any project using such bonus floor area shall be in violation of this title if any such housing unit does not satisfy such requirements, or if satisfactory documentation is not provided to the Director of the Office of Housing, at any time during such period. The Director of the Office of Housing may provide by rule for

circumstances in which housing units maybe replaced if lost due to casualty or other causes, and for terms and conditions upon which a cash contribution may be made in lieu of continuing to provide housing units under the terms of this subsection.

Chart 23.49.012 A

j. Housing units provided to qualify for a bonus, or produced with voluntary contributions made under this section, should include a range of unit sizes, including units suitable for families with children. The Housing Director is authorized to prescribe by rule minimum requirements for the range of unit sizes, by numbers of bedrooms, in housing provided to qualify for a bonus. The Housing Director shall take into account, in any such rule, estimated distributions of household sizes among low-income households. The Housing Director is further authorized to adopt policies for distribution of unit sizes in housing developments funded by contributions received under this section.

2. Child Care.

a. For each square foot of bonus floor area allowed under this section, in addition to providing housing or an alternative cash contribution pursuant to subsection B1, the applicant shall provide fully improved child care facility space sufficient for 0.000127 of a child care slot, or a cash contribution to the City of Three Dollars and Twenty-five Cents (\$3.25), to be administered by the Human Services Department. The Director of the Human Services Department may adjust the alternative cash contribution, no more frequently than annually, approximately in proportion to the change in the Consumer Price Index, All Urban Consumers, Seattle-Tacoma metropolitan area, All Items (1982-84=100), as determined by the U.S. Department of Labor, Bureau of Labor Statistics, or successor index, or any other cost index that such Director may deem appropriate. The base year for the first such adjustment shall be 2001. The minimum interior space in the child care facility for each child care slot shall comply with all applicable state and local regulations governing the operation of licensed childcare providers. Child care facility space shall be deemed provided only if the applicant causes the space to be newly constructed or newly placed in child care use after the submission of a permit application for the project intended to use the bonus floor area, except as provided in subsection B2b(6). If any contribution or subsidy in any form is made by any public entity to the acquisition, development, financing or improvement of any child care facility, then any portion of the space in such facility determined by the Director of the Human Services Department to be attributable to such contribution or subsidy shall not be considered as provided by any applicant other than that public entity.

b. Child care space shall be provided on the same lot as the project using the bonus floor area or on another lot in a downtown zone and shall be contained in a child care facility satisfying the following standards:

(1) The child care facility and accessory exterior space must be approved for licensing by the State of Washington Department of Social and Health Services and any other applicable state or local governmental agencies responsible for the regulation of licensed childcare providers.

(2) At least twenty (20) percent of the number of child care slots for which space is provided as a condition of bonus floor area must be reserved for, and affordable to, families with annual incomes at or below the U.S. Department of Housing and Urban Development Low Income Standard for Section 8 Housing based on family size (or, if such standard shall no longer be published, a standard established by the Human Services Director based generally on eighty (80) percent of the median family income of the Metropolitan Statistical Area, or division thereof, that includes Seattle, adjusted for family size). Child care slots shall be deemed to meet these conditions if they serve, and are limited to, (a) children receiving child care subsidy from the City of Seattle, King County or State Department of Social and Health Services, and/or (b) children whose families have annual incomes no higher than the above standard who are charged according to a sliding fee scale such that the fees paid by any family do not exceed the amount it would be charged, exclusive of subsidy, if the family were enrolled in the City of Seattle Child Care Subsidy Program.

(3) Child care space provided to satisfy bonus conditions shall be dedicated to child care use, consistent with the terms of this section, for twenty (20) years. The dedication shall be established by a recorded covenant, running with the land, and enforceable by the City, signed by the owner of the lot where the child care facility is located and by the owner of the lot where the bonus floor area is used, if different from the lot of the child care facility. The child care facility shall be maintained in operation, with adequate staffing, at least eleven (11) hours per day, five (5) days per week, fifty (50) weeks per year.

(4) Exterior space for which a bonus is or has been allowed under any other section of this title or under former Title 24 shall not be eligible to satisfy the conditions of this section.

(5) Unless the applicant is the owner of the child care space and is a duly licensed and experienced child care provider approved by the Director of the Human Services Department, the applicant shall provide to the Director a signed agreement, acceptable to such Director, with a duly licensed child care provider, under which the child care provider agrees to operate the child care facility consistent with the terms of this section and of the recorded covenant, and to provide reports and documentation to the City to demonstrate such compliance.

(6) One (1) child care facility may fulfill the conditions for a bonus for more than one (1) project if it includes sufficient space, and provides sufficient slots affordable to limited income families, to satisfy the conditions for each such project without any space or child care slot being counted toward the conditions for more than one (1) project. If the child care facility is located on the same lot as one of the projects using the bonus, then the owner of that lot shall be responsible for maintaining compliance with all the requirements applicable to the child care facility; otherwise responsibility for such requirements shall be allocated by agreement in such manner as the Director of the Human Services Department may approve. If a child care facility developed to qualify for bonus floor area by one applicant includes space exceeding the amount necessary for the bonus floor area used by that applicant, then to the extent that the voluntary agreement accepted by the Director of the Human Services Department from that applicant so provides, such excess space may be deemed provided by the applicant for a later project pursuant to a new voluntary agreement signed by both such applicants and by any other owner of the child care facility, and a modification of the recorded covenant, each in form and substance acceptable to such Director.

c. The Director of the Human Services Department shall review the design and proposed management plan for any child care facility proposed to qualify for bonus floor area to determine whether it will comply with the terms of this section. The allowance of bonus floor area is conditioned upon approval of the design and proposed management plan by the Director. The child care facility shall be constructed consistent with the design approved by such Director and shall be operated for the minimum twenty (20) year term consistent with the management plan approved by such Director, in each case with only such modifications as shall be approved by such Director. If the proposed management plan includes provisions for payment of rent or occupancy costs by the provider, the management plan must include a detailed operating budget, staffing ratios, and other information requested by the Director to assess whether the child care facility may be economically feasible and able to deliver quality services.

d. The Director of the Human Services Department is authorized to accept a voluntary agreement for the provision of a child care facility to satisfy bonus conditions and related agreements and instruments consistent with this section. The voluntary agreement may provide, in case a child care facility is not maintained in continuous operation consistent with this subsection B2 at any time within the minimum twenty (20) year period, for the City's right to receive payment of a prorated amount of the alternative cash contribution that then would be applicable to a new project seeking bonus floor area. Such Director may require security or evidence of adequate financial responsibility, or both, as a condition to acceptance of an agreement under this subsection.

C. Cash Option Payments. Cash payments under voluntary agreements for bonuses shall be made prior to issuance of any building permit after the first building permit for a project, and in any event before any permit for any construction activity other than excavation and shoring is issued, or if the bonus is for use of existing floor area, the cash payment shall be made prior to issuance of any permit or modification allowing for use of such space as chargeable floor area. Such payments shall be deposited in special accounts established solely to fund capital expenditures for the public benefit features for which the payments are made as set forth in this section. Housing units that are funded with cash contributions under this section shall be generally comparable in their average size and quality of construction to other housing units in the same structure, in the judgment of the Housing Director.

D. No Subsidies for Bonused Housing: Exception.

1. Intent. Housing provided through the bonus system is intended to mitigate a portion of the additional housing needs resulting from increased density, beyond those needs that would otherwise exist, which the City and other governmental and charitable entities attempt to meet through various subsidy programs. Allowing bonus floor area under the performance option for housing that uses such subsidy programs therefore could undermine the intent of this section.

2. Agreement Concerning Subsidies. The Director of the Office of Housing may require, as a condition of any bonus floor area for housing under the performance option, that the owner of the lot upon which the housing is located agree not to seek or accept any subsidies, including without limitation those items referred to in subsection D3 of this section, related to the housing, except for any subsidies that may be allowed by the Director of the Office of Housing

under that subsection. The Director may require that such agreement provide for the payment to the City, for deposit in the Downtown Housing Bonus Account, of the value of any subsidies received in excess of any amounts allowed by such agreement.

3. No Bonus for Subsidized or Restricted Housing. In general, no bonus may be earned by providing housing if:

a. Any person is receiving or will receive with respect to the housing any charitable contributions or public subsidies for housing development or operation, including, but not limited to, tax exempt bond financing, tax credits, federal loans or grants. City of Seattle housing loans or grants, county housing funds, State of Washington housing funds, or property tax exemptions or other special tax treatment; or

b. The housing is or would be, independent of the requirements for the bonus, subject to any restrictions on the use, occupancy or rents.

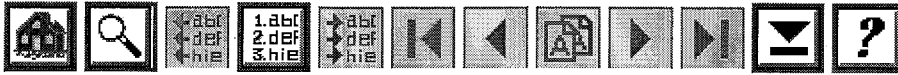
4. Exceptions by Rule. The Director of the Office of Housing may provide, by rule promulgated after the effective date of this ordinance, for terms and conditions on which exceptions to the restriction on subsidies in this subsection may be allowed. Such rule may provide that, as a condition to any exception, the Director of the Office of Housing shall increase the amount of housing floor area per bonus square foot, as set forth in subsection B1 of this section, to an amount that allows credit for only the Director's estimate of the incremental effect, in meeting the City's housing needs for the next fifty (50) years, of the net financial contribution that is being made by the applicant pursuant to the voluntary agreement and not funded or reimbursed, directly or indirectly, from any other source.

(Ord. 122054 Section 14, 2006; Ord. 120443 Sections 7, 8, 2001)

Definitions of terms used in Land Use Code.

Link to Recent ordinances passed since 4/2/07 which may amend this section. (Note: this feature is provided as an aid to users, but is not guaranteed to provide comprehensive information about related recent ordinances. For more information, contact the Seattle City Clerk's Office at 206-684-5474, or by e-mail at clerk@seattle.gov)





City of Seattle Legislative Information Service

Seattle Municipal Code

Information retrieved September 26, 2007 8:28 AM

Title 23 - LAND USE CODE

Subtitle III Land Use Regulations

Division 2 Authorized Uses and Development Standards

Chapter 23.49 - Downtown Zoning

Subchapter I General Provisions

SMC 23.49.013 Bonus floor area for amenities.

A. An applicant may achieve a portion of the chargeable floor area to be established in addition to base FAR through bonuses for amenities, subject to the limits in this chapter. Amenities for which bonuses may be allowed are limited to:

1. Public open space amenities, including hillside terraces on sites shown as eligible for bonuses on Map 1J, urban plazas in DOC1, DOC2 and DMC 340/290-400 zones, parcel parks in DOC1, DOC2, DMC, and DMR zones, public atria in DOC1, DOC2, and DMC 340/290-400 zones, green street improvements and green street setbacks on designated green streets;

2. Hillclimb assists or shopping corridors on sites shown as eligible for these respective bonuses on Map 1J;

3. Human services uses as follows:

a. Information and referral for support services;

b. Health clinics;

c. Mental health counseling services;

d. Substance abuse prevention and treatment services;

e. Consumer credit counseling;

f. Day care services for adults;

g. Jobs skills training services;

4. Public restrooms;

5. For projects in a DOC1, DOC2, or DMC 340'/290-400' zone, restoration and preservation of Landmark performing arts theaters, provided that the following conditions are met:

a. the theater contains space that was designed for use primarily as, or is suitable for use as, a performing arts theater;

b. the theater is located in a DOC1, DOC2, DRC, or DMC zone;

c. the theater is a designated Landmark pursuant to Chapter 25.12;

d. the theater is subject to an ordinance establishing an incentive and controls, or the owner of the theater executes, prior to the approval of a floor area bonus under any agreement with respect to such theater, an incentives and controls agreement approved by the City Landmarks Preservation Board;

e. the theater has, or will have upon completion of a proposed plan or rehabilitation, a minimum floor area devoted to performing arts theater space and accessory uses of at least twenty thousand (20,000) square feet; and

f. The theater will be available, for the duration of any commitment made to qualify for a floor area bonus, for live theater performances no fewer than one hundred eighty (180) days per year; and

6. Transit station access for fixed rail transit facilities.

B. Standards for Amenities.

1. Location of Amenities. Amenities shall be located on the lot using the bonus, except as follows:

a. Green street improvements may be located within an abutting right-of-way subject to applicable Director's rules.

b. An open space amenity, other than green street improvements, may be on a lot other than the lot using the bonus, provided that it is within a Downtown zone and all of the following conditions are satisfied:

(1) The open space must be open to the general public without charge, must meet the eligibility conditions of the Downtown Amenity Standards, and must be one of the open space features cited in subsection A1 of this section.

(2) The open space must be within one-quarter (1/4) mile of the lot using the bonus, except as may be permitted pursuant to subsection B1b(4) .

(3) The open space must have a minimum contiguous area of five thousand (5,000) square feet, except as may be permitted pursuant to subsection B1b(4) .

(4) Departures from standards for the minimum size of off-site open space and maximum distance from the project may be allowed by the Director as a Type I decision if the Director determines that if such departures are approved, the proposed open space will meet the additional need for open space caused by the project, and improve public access to the open space compared to provision of the open space on-site.

(5) The owner of any lot on which off-site open space is provided to meet the requirements of this section shall execute and record an easement or other instrument in a form acceptable to the Director assuring compliance with the requirements of this section, including applicable conditions of the Downtown Amenity Standards.

c. Public restrooms shall be on a ground floor; shall satisfy all codes and accessibility standards; shall be open to the general public during hours that the structure is open to the public, although access may be monitored by a person located at the restroom facility; shall be maintained by the owner of the structure for the life of the structure that includes the bonused space; and shall be designated by signs sufficient so that they are readily located by pedestrians on an abutting street or public open space. The Director is authorized to establish standards for the design, construction, operation and maintenance of public restrooms qualifying for a bonus, consistent with the intent of this subsection to encourage the provision of accessible, clean, safe and environmentally sound facilities.

2. Options for Provision of Amenities.

a. Amenities must be provided by performance except as expressly permitted in this Section. The Director may accept a cash payment for green street improvements subject to the provisions of this section, the Downtown Amenity Standards and the Green Street Director's Rule, DR 11-93, if the Director determines that improvement of a green street abutting or in the vicinity of the lot within a reasonable time is feasible. The cash payment must be in an amount sufficient to improve fully one (1) square foot of green street space for each five (5) square feet of bonus floor area allowed for such payment.

b. Restoration and preservation of a Landmark performing arts theater may consist of financial assistance provided by the applicant for rehabilitation work on a Landmark performing arts theater, or for retirement of the cost of improvements made after February 5, 1993, if:

(1) The assistance is provided pursuant to a linkage agreement between the applicant and the owner of the Landmark performing arts theater satisfactory to the Director, in which such owner agrees to use such financial assistance to complete such rehabilitation and agrees that the applicant is entitled to all or a portion of the bonus floor area that may be allowed therefor;

(2) The owner of the Landmark performing arts theater executes and records covenants enforceable by the City, agreeing to maintain the structure and the performing arts theater use, consistent with the Downtown Amenity Standards; and

(3) Prior to the issuance of any building permit after the first

building permit for the project using the bonus, and in any event before any permit for any construction activity other than excavation and shoring is issued for that project, unless the rehabilitation work has then been completed, the applicant posts security for completion of that work, consistent with the Downtown Amenity Standards.

3. Ratios and limits.


a. Amenities may be used to gain floor area according to the applicable ratios, and subject to the limits, in Section 23.49.011  and in Chart 23.49.013A.

Chart 23.49.013 A

b. Any bonus for restoration and preservation of a Landmark performing arts theater shall not exceed a maximum of one (1) FAR. Such bonus may be allowed at a variable ratio, as described in the Downtown Amenity Standards, of up to twelve (12) square feet of floor area granted per one (1) square foot (12:1) of performing arts theater space rehabilitated by the applicant, or previously rehabilitated so as to have a useful life at the time the bonus is allowed of no less than twenty (20) years, in each case consistent with any controls applicable to the Landmark performing arts theater and any certificates of approval issued by the Landmarks Preservation Board. For purposes of this subsection, performing arts theater space shall consist only of the following: stage; audience seating; theater lobby; backstage areas such as dressing and rehearsal space; the restrooms for audience, performers and staff; and areas reserved exclusively for theater storage. For any Landmark performing arts theater from which TDR has been transferred, or that has received any public funding or subsidy for rehabilitation or improvements, the bonus ratio shall be limited, pursuant to a subsidy review, to the lowest ratio, as determined by the Housing Director, such that the benefits of the bonus, together with the value of any TDR and any public finding or subsidy, are no more than the amounts reasonably necessary to make economically feasible:

(1) The rehabilitation and preservation of the Landmark performing arts theater; and

(2) Any replacement by the owner of such theater of low-income housing that is reasonably required to be eliminated from the lot of the Landmark performing arts theater to make rehabilitation, preservation and operation of the performing arts theater economically feasible.

4. Downtown Amenity Standards.

a. The Director shall approve a feature for a bonus if the Director determines that the feature satisfies the eligibility conditions of the Downtown Amenity Standards, and that the feature carries out the intent of this section and the guidelines in the Downtown Amenity Standards.

b. The Director may allow departures from the eligibility conditions in the Downtown Amenity Standards as a Type I decision, if the applicant can demonstrate that the amenity better achieves the intent of the amenity as described in this chapter and the Downtown Amenity Standards, and that the departure is consistent with any applicable

criteria for allowing the particular type of departure in the Downtown Amenity Standards.

c. The Director may condition the approval of a feature for a bonus as provided in the Downtown Amenity Standards.

5. Open Space Amenities. Open space amenities must be newly constructed on a lot in a Downtown zone in compliance with the applicable provisions of this chapter and the Downtown Amenity Standards.

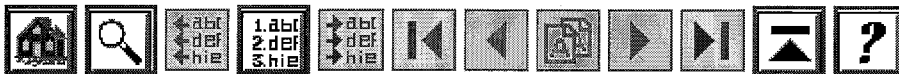
6. Declaration. When amenities are to be provided on-site for purposes of obtaining bonus floor area, the owner shall execute and record a declaration in a form acceptable to the Director identifying the features and the fact that the right, to develop and occupy a portion of the gross floor area on the site is based upon the long-term provision and maintenance of those amenities.

7. All bonused amenities shall be provided and maintained in accordance with the applicable provisions of the Downtown Amenity Standards for as long as the portion of the chargeable floor area gained by the amenities exists. A permit is required to alter or remove any bonused amenity.

(Ord. 122054 Section 15, 2006; Ord. 120443 Section 9, 2001.)

Definitions of terms used in Land Use Code.

Link to Recent ordinances passed since 4/2/07 which may amend this section. (Note: this feature is provided as an aid to users, but is not guaranteed to provide comprehensive information about related recent ordinances. For more information, contact the Seattle City Clerk's Office at 206-684-5474, or by e-mail at clerk@seattle.gov)





City of Seattle Legislative Information Service

Seattle Municipal Code

Information retrieved September 26, 2007 8:28 AM

Title 23 - LAND USE CODE

Subtitle III Land Use Regulations

Division 2 Authorized Uses and Development Standards

Chapter 23.49 - Downtown Zoning

Subchapter I General Provisions

SMC 23.49.014 Transfer of development rights (TDR).

A. General Standards.

1. The following types of TDR may be transferred to the extent permitted in Chart 23.49.014A, subject to the limits and conditions in this Chapter:

- a. Housing TDR;
- b. DMC housing TDR;
- c. Landmark housing TDR;
- d. Landmark TDR; and
- e. Open space TDR.

2. In addition to transfers permitted under subsection A1, TDR may be transferred from any lot to another lot on the same block, as within-block TDR, to the extent permitted in Chart 23.49.014A, subject to the limits and conditions in this chapter.

3. A lot's eligibility to be either a sending or receiving lot is regulated by Chart 23.49.014A.

4. Except as expressly permitted pursuant to this chapter, development rights or potential floor area may not be transferred from one lot to another.

5. No permit after the first building permit, and in any event, no permit for any construction activity other than excavation and shoring or for occupancy of existing floor area by any use based upon TDR, will be issued for development that includes TDR until the applicant's possession of TDR is demonstrated according to rules promulgated by the Director to implement this section.

B. Standards for Sending Lots.

1. a. The maximum amount of floor area that may be transferred, except as open space TDR, Landmark TDR, or Landmark housing TDR, from an eligible sending lot, except a sending lot in the PSM or IDM zones, is the amount by which the product of the eligible lot area times the base FAR of the sending lot, as provided in Section 23.49.011 **FC**, exceeds the sum of any chargeable gross floor area existing or, if a DMC housing TDR site, to be developed on the sending lot, plus any TDR previously transferred from the sending lot.

b. The maximum amount of floor area that may be transferred from an eligible open space TDR site is the amount by which the product of the eligible lot area times the base FAR of the sending lot, as provided in Section 23.49.011 **FC**, exceeds the sum of (a) any existing chargeable gross floor area that is built on or over the eligible lot area on the sending lot, plus (b) the amount, if any, by which the total of any other chargeable floor area on the sending lot exceeds the product of the base FAR of the sending lot, as provided in Section 23.49.011 **FC**, multiplied by the difference between the total lot area and the eligible lot area, plus (c) any TDR previously transferred from the sending lot.

c. The maximum amount of floor area that may be transferred from an eligible Landmark housing TDR site is the amount by which the product of the eligible lot area times the base FAR of the sending lot, as provided in Section 23.49.011 **FC**, exceeds TDR previously transferred from the sending lot, if any.

d. The maximum amount of floor area that may be transferred from an eligible Landmark TDR site, when the chargeable floor area of the landmark structure is less than or equal to the base FAR permitted in the zone, is equivalent to the base FAR of the sending lot, minus any TDR that have been previously transferred. For landmark structures having chargeable floor area greater than the base FAR of the zone, the amount of floor area that may be transferred is limited to an amount equivalent to the base FAR of the sending lot minus the sum of (i) any chargeable floor area of the landmark structure exceeding the base FAR and (ii) any TDR that have been previously transferred.

e. For purposes of this subsection 1, the eligible lot area is the total area of the sending lot, reduced by the excess, if any, of the total of accessory surface parking over one-quarter (1/4) of the total area of the footprints of all structures on the sending lot; and for an open space TDR site, further reduced by any portion of the lot ineligible under Section 23.49.016 **FC**.

2. When the sending lot is located in the PSM or IDM zone, the gross floor area that may be transferred is six (6) FAR, minus the sum of any existing chargeable gross floor area and any floor area in residential use on the sending lot, and further reduced by any TDR previously transferred from the sending lot.

3. When TDR are transferred from a sending lot in a zone with a base FAR limit, the amount of chargeable gross floor area that may then be built on the sending lot shall be equal to the area of the lot multiplied by the applicable base FAR limit set in Section 23.49.011 **FC**,

minus the total of:

a. The existing chargeable floor area on the lot; plus

b. The amount of gross floor area transferred from the lot.


4. When TDR are sent from a sending lot in a PSM zone, the combined maximum chargeable floor area and residential floor area that may then be established on the sending lot shall be equal to the total gross floor area that could have been built on the sending lot consistent with applicable development standards as determined by the Director had no TDR been transferred, less the sum of:

a. The existing chargeable floor area on the lot; plus

b. The amount of gross floor area that was transferred from the lot.

5. Gross floor area allowed above base FAR under any bonus provisions of this title or the former Title 24, or allowed under any exceptions or waivers of development standards, may not be transferred. TDR may be transferred from a lot that contains chargeable floor area exceeding the base FAR only if the TDR are from an eligible Landmark site, consistent with subsection B1c above, or to the extent, if any, that:

a. TDR were previously transferred to such lot in compliance with the Land Use Code provisions and applicable rules then in effect;

b. Those TDR, together with the base FAR under Section 23.49.011 , exceed the chargeable floor area on the lot and any additional chargeable floor area for which any permit has been issued or for which any permit application is pending; and

c. The excess amount of TDR previously transferred to such lot would have been eligible for transfer from the original sending lot under the provisions of this section at the time of their original transfer from that lot.

6. Landmark structures on sending lots from which Landmark TDR or Landmark housing TDR are transferred shall be restored and maintained as required by the Landmarks Preservation Board.

7. Housing on lots from which housing TDR are transferred shall be rehabilitated to the extent required to provide decent, sanitary and habitable conditions, in compliance with applicable codes, and so as to have an estimated minimum useful life of at least fifty (50) years from the time of the TDR transfer, as approved by the Director of the Office of Housing. Landmark buildings on lots from which Landmark housing TDR are transferred shall be rehabilitated to the extent required to provide decent, sanitary and habitable housing, in compliance with applicable codes, and so as to have an estimated minimum useful life of at least fifty (50) years from the time of the TDR transfer, as approved by the Director of the Office of Housing and the Landmarks Preservation Board. If housing TDR or Landmark housing TDR are proposed to be transferred prior to the completion of work necessary to satisfy this subsection B7, the Director of the Office of

Housing may require, as a condition to such transfer, that security be deposited with the City to ensure the completion of such work.

8. The housing units on a lot from which housing TDR, Landmark housing TDR, or DMC housing TDR are transferred, and that are committed to low-income housing use as a condition to eligibility of the lot as a TDR sending lot, shall be generally comparable in their average size and quality of construction to other housing units in the same structure, in the judgment of the Housing Director, after completion of any rehabilitation or construction undertaken in order to qualify as a TDR sending lot.

C. Limit on within-block TDR. Any receiving lot is limited to a gain of fifteen (15) percent of the floor area above the first increment of FAR above the base FAR, as specified in subsection 23.49.011 ~~23.49.011~~ A2a, from TDR from sending lots that are eligible to send TDR solely because they are on the same block as the receiving lot.

D. Transfer of Development Rights Deeds and Agreements.

1. The fee owners of the sending lot shall execute a deed with the written consent of all holders of encumbrances on the sending lot, unless (in the case of TDR from a housing TDR site, Landmark housing TDR site or DMC housing TDR site) such consent is waived by the Director of the Office of Housing for good cause, which deed shall be recorded in the King County real property records. When TDR are conveyed to the owner of a receiving lot described in the deed, then unless otherwise expressly stated in the deed or any subsequent instrument conveying such lot or the TDR, the TDR shall pass with the receiving lot whether or not a structure using such TDR shall have been permitted or built prior to any conveyance of the receiving lot. Any subsequent conveyance of TDR previously conveyed to a receiving lot shall require the written consent of all parties holding any interest in or lien on the receiving lot from which the conveyance is made. If the TDR are transferred other than directly from the sending lot to the receiving lot using the TDR, then after the initial transfer, all subsequent transfers also shall be by deed, duly executed, acknowledged and recorded, each referring by King County recording number to the prior deed.

2. Any person may purchase any TDR that are eligible for transfer by complying with the applicable provisions of this section, whether or not the purchaser is then an applicant for a permit to develop downtown real property. Any purchaser of such TDR (including any successor or assignee) may use such TDR to obtain chargeable floor area above the applicable base on a receiving lot to the extent such use of TDR is permitted under the Land Use Code provisions in effect on the date of vesting, under applicable law, of such person's rights with respect to the issuance of permits for development of the project intended to use such TDR. The Director may require, as a condition of processing any permit application using TDR or for the release of any security posted in lieu of a deed for TDR to the receiving lot, that the owner of the receiving lot demonstrate that the TDR have been validly transferred of record to the receiving lot, and that such owner has recorded in the real estate records a notice of the filing of such permit application, stating that such TDR are not available for retransfer.

3. For transfers of housing TDR, Landmark housing TDR, or DMC housing TDR, the owner of the sending lot shall execute and record an agreement, with the written consent of all holders of encumbrances on

the sending lot, unless such consent is waived by the Director of the Office of Housing for good cause, to provide for the maintenance of the required housing on the sending lot for a minimum of fifty (50) years. Such agreement shall commit to limits on rent and occupancy, consistent with the definition of housing TDR site, Landmark housing TDR site, or DMC housing TDR site, as applicable, and acceptable to the Director of the Office of Housing.

4. For transfers of Landmark TDR or Landmark housing TDR, the owner of the sending lot shall execute and record an agreement in form and content acceptable to the Landmarks Preservation Board providing for the restoration and maintenance of the historically significant features of the structure or structures on the lot.

5. A deed conveying TDR may require or permit the return of the TDR to the sending lot under specified conditions, but notwithstanding any such provisions:

Chart 23.49.014 A

a. The transfer of TDR to a receiving lot shall remain effective so long as any portion of any structure for which a permit was issued based upon such transfer remains on the receiving lot; and

b. The City shall not be required to recognize any return of TDR unless it is demonstrated that all parties in the chain of title have executed, acknowledged and recorded instruments conveying any interest in the TDR back to the sending lot and any lien holders have released any liens thereon.

6. Any agreement governing the use or development of the sending lot shall provide that its covenants or conditions shall run with the land and shall be specifically enforceable by The City of Seattle.

E. TDR Sales Before Base FAR Increases and Changes in Exemptions. Except for transfers of TDR from a sending lot with a major performing arts facility, transfers of TDR from any lot from which a TDR transfer was made prior to the effective date of Ordinance 120443 are limited to the amount of TDR available from such lot immediately prior to such date.

F. Projects Developed Under Prior Code Provisions.

1. Any project that is developed pursuant to a master use permit issued under the provisions of this title as in effect prior to the effective date of Ordinance 120443, which permit provides for the use of TDR, may use TDR that were transferred from the sending lot consistent with such prior provisions prior to such effective date.

2. In addition or in the alternative, such a project may use TDR that are transferred from a sending lot after the effective date of Ordinance 120443.

3. The use of TDR by any such project must be consistent with the provisions of this title applicable to the project, including any limits on the range of FAR in which a type of TDR may be used, except

that open space TDR may be used by such a project in lieu of any other TDR or any bonus, or both, allowable under such provisions.

G. TDR Satisfying Conditions to Transfer Under Prior Code.

1. If the conditions to transfer Landmark TDR, as in effect immediately prior to the effective date of Ordinance 120443, the following are satisfied on or before December 31, 2001, such TDR may be transferred from the sending lot in the amounts eligible for transfer as determined under the provisions of this title in effect immediately prior to the effective date of Ordinance 120443. If the conditions to transfer housing TDR are satisfied prior to the effective date of Ordinance 120443 under the provisions of this title then in effect, such TDR may be transferred from the sending lot in the amounts eligible for transfer immediately prior to that effective date. If the conditions to transfer TDR from a major performing arts facility are satisfied prior to the effective date of Ordinance 120443 under the provisions of this Title then in effect, TDR may be transferred from the sending lot after that effective date, for use on any receiving lots in zones where housing TDR may be used according to Chart 23.49.014 A, in an amount as determined under subsection B of this section, provided that the cumulative amount of TDR that may be transferred after June 1, 2005 from any sending lot based on the presence of a major performing arts facility is limited to one hundred fifty thousand (150,000) square feet.

2. For purposes of this subsection, conditions to transfer include, without limitations, the execution by the owner of the sending lot, and recording in the King County real property records, of any agreement required by the provisions of this title or the Public Benefit Features Rule in effect immediately prior to the effective date of Ordinance 120443, but such conditions do not include any requirement for a master use permit application for a project intending to use TDR, or any action connected with a receiving lot. TDR transferable under this subsection G are eligible either for use consistent with the terms of Section 23.49.011 **EE** or for use by projects developed pursuant to permits issued under the provisions of this title in effect prior to the effective date of Ordinance 120443. The use of TDR transferred under this subsection G on the receiving lot shall be subject only to those conditions and limits that apply for purposes of the master use permit decision for the project using the TDR.

H. Time of Determination of TDR Eligible for Transfer. Except as stated in subsection G, the eligibility of a sending lot to transfer TDR, and the amount transferable from a sending lot, shall be determined as of the date of transfer from the sending lot and shall not be affected by the date of any application, permit decision or other action for any project seeking to use such TDR.

I. Use of Previously Transferred TDR by New Projects. Any project using TDR according to applicable limits on types and amounts of TDR in Section 23.49.011 **EE** may use TDR that were transferred from the sending lot consistent with the provisions of this title in effect at the time of such transfer. For purposes of this subsection I, the owner of TDR that were transferred based upon a housing commitment accepted by the City shall be entitled to have such TDR considered as housing TDR.

(Ord. 122054 Section 16, 2006; Ord. 121874 Section 2,

2005; Ord. 120967 Sections 4,5, 2003; Ord. 120443 Section 11, 2001.)

1. Editor's Note: Ordinance 120443 was effective as of August 26, 2001.

Definitions of terms used in Land Use Code.

Link to Recent ordinances passed since 4/2/07 which may amend this section. (Note: this feature is provided as an aid to users, but is not guaranteed to provide comprehensive information about related recent ordinances. For more information, contact the Seattle City Clerk's Office at 206-684-5474, or by e-mail at clerk@seattle.gov)

